

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON

WALTER A. NETSCH

JOHN S. CHASE

ALAN R. NOVAK

SONDRA G. MYERS

EDWARD D. STONE, JR.

CHARLES H. ATHERTON, Secretary

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
202-566-1066

MEETING OF THE COMMISSION OF FINE ARTS

April 7, 1981

AM

10:00 CONVENE, 708 Jackson Place, N.W., Washington, D.C.

I. ADMINISTRATION

- A. Approval of March 10, 1981 minutes
- B. Dates of next meetings: May 12, 1981
July 14, 1981
- C. Request for comments on S. 45, "A bill to reform the laws relating to the provision of Federal assistance in order to provide state and local governments with greater flexibility in managing programs and project using such assistance."

10:15

II. SUBMISSIONS AND REVIEWS

- A. District of Columbia, Department of Housing and Community Development
 - 1. Old Georgetown Act
 - a. O.G. 81-87, 3020 K Street, N.W. Georgetown Harbour Associates; mixed use waterfront development; final plans and working drawings.
 - b. Appendix I
 - 2. Shipstead-Luce Act
 - a. S.L. 81-39, 409-411 12th Street, S.W. New construction, office building; Resubmission of preliminary design.
 - b. Appendix II

11:30

II. SUBMISSIONS AND REVIEWS

B. Department of Treasury, Bureau of the Mint

1. CFA 7/APR/81 - 1, Gold Medallion Series; revised designs for Willa Cather Medal.
2. CFA 7/APR/81 - 2, Gold Medallion Series; revised designs for Mark Twain Medal.

C. National Park Service, National Capital Region

1. CFA 7/APR/81 - 3, Federal Reserve Building grounds; temporary sculpture exhibit.

D. Pennsylvania Avenue Development Corporation

1. CFA 7/APR/81 - 4, John Marshall Park; preliminary plans for park development. John Marshall Place, N.W.

REPORT OF ACTIONS TAKEN UNDER THE OLD GEORGETOWN ACT

April 7, 1981

<u>NO.</u>	<u>ADDRESS AND OWNER</u>	<u>PROJECT</u>
O.G. 81-27	3243-5 M Street, N.W.	24" x 10'6" sign
HPA. 81-63	The Gap Stores	

ACTION: Withdrawn at request of applicant.

O.G. 81-53	1249 Wisconsin Avenue, N.W.	Alterations and additions to building.
HPA. 81-147	Jacob Solemanzedeh	

ACTION: Issue permit for replacement of sash with new wood sash on upper two floors of Wisconsin Avenue facade including dormer. Note alteration to original drawings returned herewith. No objection to rear alterations, due to limited visibility from public space.

O.G. 81-55	1669 Wisconsin Avenue, N.W.	Remodel and addition to existing structure.
HPA. 81-151	Fabrizio Jawer	

ACTION: Returned for additional information.

O.G. 81-63	1065-67 Wisconsin Avenue, N.W.	Interior alterations and renovations
HPA. 81-172	Elsworth T. Simpson and Robert Lee	of exterior to become Houstons Restaurant.

ACTION: Concept approved for replacement in kind of second floor sash and closing first floor garage door. No objection to use of an awning, provided it is modest and does not cover the walk to the curb. Request further submission of woodwork details, and planters at first floor level. Sign should conform to code requirements limiting it in size to 25 square feet.

O.G. 81-65	3222 M Street, N.W.	Revision to permit #266369 for
HPA. 81-180	Georgetown Park Associates	the modification of the residential deck elevations.

ACTION: Preliminary studies as shown on design "A" recommended for further development. Request submission to the Georgetown Board on March 24, 1981 and the Commission of Fine Arts on April 7, 1981 for review and approval prior to issuance of permit.

REPORT OF ACTIONS TAKEN UNDER THE OLD GEORGETOWN ACT

April 7, 1981

<u>NO.</u>	<u>ADDRESS AND OWNER</u>	<u>PROJECT</u>
* O.G. 81-70 HPA. 81-196	3300 M Street, N.W. Meredith Corporation	New residential/commercial building
ACTION: Preliminary massing studies approved subject to development at approximate forty foot height with arch theme on ground floor and top floor. Additional design studies showing other facades on M and 33rd Streets, and incorporating a minimum penthouse should be submitted for approval prior to submission of working drawings and material samples. Ground floor retail space with more window area would be more typical of historic district, as discussed with architect on March 24, 1981.		
* O.G. 81-72 HPA. 81-200	3020 K Street, N.W. Georgetown Harbour Associates	Preliminary review of new construction
ACTION: For Action see letter from J. Carter Brown to Robert L. Moore dated March 23, 1981.		
* O.G. 81-73 HPA. 81-205	R 3256 M Street, N.W. Georgetown Paper Stock Co.	Raze existing building
ACTION: Issue permit for razing garage and warehouse structures. Structures were found to have no known architectural or historical significance and do not contribute to the historic district.		
* O.G. 81-74 HPA. 81-218	3304 R Street, N.W. William C. Foster	Construct sun room of brick and glass 8' x 12'.
ACTION: Issue permit for sun room addition.		
O.G. 81-75 HPA. 81-212	1644 Avon Place, N.W. Mrs. G. Lewis Jones	Replace rotten fence.
ACTION: Issue permit for fence replacement with finish sign toward public space.		
O.G. 81-76 HPA. 81-220	2703 P Street, N.W. Geraldine M Otremba	Replace fence around perimeter of property, add wood deck; brick over soil in yard.
ACTION: Issue permit for fence and deck.		

REPORT OF ACTIONS TAKEN UNDER THE OLD GEORGETOWN ACT

April 7, 1981

<u>NO.</u>	<u>ADDRESS AND OWNER</u>	<u>PROJECT</u>
O.G. 81-80	1517 30th Street, N.W.	Repairs and alterations as per
HPA. 81-230	Dodge House Associates	attached plans.

ACTION: Request additional information resulting from questions that arose at the public meeting of the Georgetown Board on March 25, 1981, and a site inspection by the Board on March 31, 1981. The final drawings should be revised and resubmitted for further review. The submission should include revisions to; the original house showing deletion of new masonry openings in the basement, deletion of excavation for habitable space beneath the verandas, deletion of new skylights in the roof, reuse of existing original sash, and the retention of the grade level metal grills. Landscaping shall be restudied and simplified. Authentic paint colors shall be studied for further discussion. The arched openings of building B shall be open on the ground floor, paneled on the second floor and filled in with balusters on the third floor. In addition, the applicant has agreed to work with the Commission staff to incorporate the concerns of the Old Georgetown Board. The above noted items have been discussed with the applicant and architect and have their general concurrence.

O.G. 81-81	3025 P Street, N.W.	Side porch (one story)
HPA. 81-231	Frank Harman, III	

ACTION: Preliminary designs approved for porch addition subject to compliance with other District of Columbia requirements.

REPORT OF ACTIONS TAKEN UNDER THE SHIPSTEAD-LUCE ACT

April 7, 1981

<u>NO.</u>	<u>ADDRESS AND OWNER</u>	<u>PROJECT</u>
* S.L. 81-19	520 North Capital Street, N.W. Commodore Hotel Inc.	Renovations of interior; new metal single-hung windows with decorative wrought-iron balconies
ACTION: Issue permit for renovation to hotel. Additional study for air conditioner grills shall be given to provide additional screening of units and submitted to CFA for approval.		
S.L. 81-30 HPA. 81-210	520 3rd Street, N.E. Lockwood Rush	Re-brick front steps, rebuild back porch, rebuild back windows, put up fence.
ACTION: No objection.		
* S.L. 81-31	2609 Klinge Road, N.W. Charles and Ina Bechhoefer	Single family dwelling
ACTION: Issue permit for construction of new residence with cedar shake roof to match those of three adjacent houses. Note: alternate roof materials may be submitted by applicant for consideration of the CFA as an amended permit application. Request landscape plan as part of material submission.		
* S.L. 81-32	2643 Virginia Avenue, N.W. Sunmark Industries	Replace bay doors, install brick veneer facade to building.
ACTION: Issue permit for service station renovation with buff colored "stucco-like" finished metal panels. Request restudy of twenty foot high floodlight fixture and sign locations and types, which are not approved as part of this submission. Recommend luminaires of outdoor lights be mounted normal to the pavement so that light is directed straight down and not at an angle.		
* S.L. 81-34	3501-19 17th Street, N.W. Jonathan Woodner Co.	New construction

ACTION: Preliminary approval of designs subject to the following recommendations which have been agreed to by the developer during public Commission meeting on March 10, 1981: There shall be a public access walk and stair between Oakwood Circle and Oakwood Terrace and from Oakwood Terrace to Rock Creek Park: There shall be individual stair entries from 17th Street to adjacent patios and units; large caliper Oak trees in place of Honey Locusts shall be planted at locations shown on plans. Final working drawings incorporating these revisions shall be submitted prior to issuance of building permit and on-site brick sample panels shall be erected. Both shall be approved by Commission prior to final construction.

THE COMMISSION OF FINE ARTS

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708 JACKSON PLACE, N.W.

WASHINGTON, D.C. 20006

For Inclusion on Appendix II

SHIPSTEAD-LUCE ACT

<u>NO.</u>	<u>ADDRESS AND OWNER</u>	<u>PROJECT</u>
S.L. 81-37	3501-19 17th Street, N.W. Jonathan Woodner Co.	Construct 3 story townhouses

ACTION: Recommend issuance of permit for the erection of first two rows of Oakwood Commons, together consisting of 13 buildings. Applicant has complied with Commission ACTION of 10 March 1981. On site brick sample will be inspected by staff.

THE COMMISSION OF FINE ARTS

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708 JACKSON PLACE, N.W.

WASHINGTON, D.C. 20006

MINUTES OF THE COMMISSION OF FINE ARTS

7 April 1981

The meeting was convened at 10:00 a.m. in the Commission of Fine Arts offices at 708 Jackson Place, N. W., Washington, D. C.

Members Present:

Hon. J. Carter Brown, Chairman
Hon. Harold Burson
Hon. John S. Chase
Hon. Sondra G. Myers
Hon. Walter A. Netsch
Hon. Alan R. Novak
Hon. Edward D. Stone, Jr.

Staff Present:

Mr. Charles H. Atherton, Secretary
Mr. Donald B. Myer, Assistant Secretary
Mr. Jeffrey R. Carson
Mrs. Sue Kohler
Mr. Richard H. Ryan

National Capital Planning Commission Staff Present:

Mr. George Evans

District of Columbia Historic Preservation Office Staff Present:

Ms. Tanya Beauchamp

I. ADMINISTRATION

A. Minutes of 10 March 1981 meeting: approved.

B. Dates of next meetings: approved as: 12 May 1981
7 July 1981
(changed from 14 July)

C. Request for comments on S.45, "A bill to reform the laws relating to the provision of Federal assistance in order to provide state and local governments with greater flexibility in managing programs and projects using such assistance." The Secretary said he would attend a meeting at OMB the following week to discuss this

complex issue, and therefore did not think the Commission could take a position on it at this meeting.

II. SUBMISSIONS AND REVIEWS

A. District of Columbia, Department of Housing and Community Development

1. Old Georgetown Act

a. O.G. 81-87, 3020 K Street, N. W. Georgetown Harbour Associates; mixed use waterfront development; final plans and working drawings. (Note: A complete transcript of the discussion of this project is appended to these minutes as Exhibit A.) Before the discussion began, the Chairman noted that at the previous meeting the proponents of the development had asked for a vote to determine whether the Commission would recommend that the Mayor issue a permit. The result had been to deny permit approval at that time. He said that following the meeting a letter had been written to the District Government stating the Commission's position. He then read the letter. The Chairman noted that the developer subsequently asked to present his proposal in further detail and request final approval for permit application; this was the purpose of the submission on the agenda for this meeting. He introduced the developer, Herbert Miller, who showed slides and reviewed the history of the various plans for the area, saying that there had been twenty plans in twenty years for the waterfront, and all had assumed there would be some development south of K Street. He recalled the downzoning from industrial to commercial, the citizens' suit against this zoning, Senator Mathias' Task Force, and the resultant agreement calling for only fifty percent of matter-of-right development. He said Secretary of Interior Andrus had signed this agreement and had stated that there was no Federal money available for purchase of the private land on the waterfront. Mr. Miller thought his proposal, which he said would make possible the development of fifteen of the eighteen acres as parkland, without expense to the Government, was the only practical one. A letter from the District Government was submitted for the record; it stated that government's intention to transfer its waterfront land to the National Park Service. (Exhibit A-1) Mr. Miller then reviewed his submission of a development project following the Task Force guidelines, its rejection by the Commission, and the submission of a new proposal. He said the Commission had praised this design, although he recognized that it would prefer an all park solution on the site. He added that a poll had been taken of Washington residents and the majority polled had favored his development over an all park solution.

Mr. Miller then turned to the financial considerations involved in the waterfront development. He said the private property was valued at twenty-four million dollars, and noted a recent letter from Secretary of the Interior Watt to the Chairman

of the Commission of Fine Arts stating that no Federal purchase was contemplated. (Exhibit A-2) He said his project would bring in an added eight million in revenue for the city and provide fourteen thousand jobs. He added that he had every intention of including the boat basin, as recommended by the Commission; and he said that in regard to the Executive Order on Floodplain Management, he had received legal advice that the Commission was not subject to it. Mr. Miller concluded by saying that the eighty-two percent park solution was the only practical one, and he thought he could make the waterfront a very attractive place.

A number of people then testified for the development. Edwin Hoffman, Chairman of the Board of Woodward and Lothrop and Chairman of the Federal City Council Waterfront Task Force, said he was surprised at the Commission's vote. He thought that because of the money problem, the unavailability of other land for the swap proposed by Senator Hatfield, and the District's need for revenue, the project should be approved. He foresaw a law suit for the city and a loss of prestige for the Commission if approval were not granted.

Appraiser Richard O'Hass reported that if the property were appraised on the basis of its being developed to its highest and best use, the value would fall in the seventy to ninety-five million dollar range.

Attorney Roger Clark noted that two legal memos had been delivered to the Chairman. He said the Commission's authority was specifically limited to reporting on the project to the Mayor, and as it had approved the preliminary plans, it was legally obligated to approve final plans which conformed to the preliminaries. He then said that if approval were withdrawn and a permit not issued, the developer would be deprived of reasonable use of his property, since he had done everything he could to comply with the Commission's recommendations. In that case, he said, the District or Federal government might be liable for inverse condemnation and obligated to purchase the property. In regard to the Executive Order on Floodplain Management, Mr. Clark said the Attorney General's office had misread it, and it did not apply to the Commission of Fine Arts. He said the Georgetown Harbour Associates' project had been designed to conform to all the floodplain requirements.

Dr. Yaron Sternberg, civil engineer, repeated his previous report to the Commission regarding flood levels and how this project was designed to cope with them. Major General Carroll Letelier, formerly with the Army Corps of Engineers, listed the ways in which this project met all Federal requirements for floodplain construction. He also discussed the boat basin, and listed conditions under which a permit from the Corps of Engineers would be required.

Lawrence Shumate, from the District Government's Office of Business and Economic Development, discussed the financial benefits to the city which would be generated by this project.

Robert McGowan, president of CSX Resources, one of the property owners, said he did not think the all park solution was viable, and added that his company was not interested in any exchange of property.

Other testimony for the project came from representatives of insurance companies, the D. C. Chamber of Commerce, Business and Professional Association of Georgetown, and several private citizens. A letter was submitted from the Chairman of the City Council expressing his personal support.

Testimony against the project was then heard. Attorney David Bonderman disagreed with attorney Clark's statements. He said the Commission was under no obligation to approve this project and could recommend against any construction. He also denied that there was a taking of property involved, and said there would be no involuntary purchase required of the District or Federal governments. He noted that certain assurances required by the Commission had not been given; in particular, assurance that the boat basin would be built. He said the developer had not even applied for a permit from the Army Corps of Engineers. Mr. Bonderman then said the eighty-two percent park figure often mentioned by Mr. Miller was misleading, since two-thirds of that land was already owned by the District; he said forty percent would be more accurate, considering only the private property. Finally, he said he agreed with the Justice Department that the Commission was subject to the Executive Order on Floodplain Management. He added that a park would be a practicable alternative to this project and more suitable to a floodplain.

Katharine Sullivan commented on the widespread support that had been received for the all park proposal; support from the Mayor, the Federation of Civic Associations, D. C. City Planning Coalition, Wisconsin Avenue Corridor Committee, Committee of One Hundred, and many others. She also noted that the former Secretary of Interior had said, "We have always favored the all park solution," and that the directors of the Park Service and the National Capital Planning Commission had also said they would prefer to see a total park on the waterfront.

Mrs. Judith Bonderman commented on the lack of a permit to build the boat basin and on the hazards of putting residential development on a floodplain.

Donald Shannon, president of the Citizens' Association of Georgetown, reaffirmed his organization's support of the Commission's previous decision to deny permit approval for this project. He commented on the need for legislation and for active citizen participation to finance the purchase of the privately owned land for park use, and noted that the value had been greatly inflated in the developer's figures.

Sidney Howe, Executive Director of the Human Environmental Center, thanked the Commission for the ruling it made in March, and reported that the National Committee for Urban Recreation and twenty-eight other organizations had joined together in support of the all park solution.

He commented on the need for recreational areas close to home, and added that a memorial to President Roosevelt could very possibly be combined with the all park solution. He closed by reading a letter from Senator Hatfield. (See transcript, Exhibit A)

Ann Satterthwaite, Vice President of the Neighborhood Citizens' Association, pointed out that only a very small part of this project would be devoted to public use, less than that provided for in the Task Force Memorandum of Agreement. She added that the strip provided along the river was really too narrow for recreational use, and said that the three-quarter of an acre within the boat basin was not yet assured.

After everyone had been heard, the Chairman expressed his thoughts on the previous month's decision to deny a permit. He said the decision had been based on long-term considerations and on the appearance the national capital presents to the world. He noted that all the great monuments and sites in Washington have taken time to bring to completion--the Capitol, the Washington Monument, the Mall. He said the Commission was not opposed to all development on the waterfront; structures associated with recreational use or the incorporation of a Presidential memorial into the park area would certainly not be objectionable. He noted that the Commission had taken an exceptionally long time to consider this project because the decision to allow development, once made, would be irreversible; there would be little chance that the area could ever again be turned back to parkland. He did not think that the Commission had hindered development in Georgetown; in truth, he said, it could be argued that it had already allowed what may turn out, when finished, to be too much. He commented that there were fine opportunities for development elsewhere in the city, specifically downtown, including the PADC area, which would not take waterfront property. He said there had been no reversal of the Commission's position in the March decision, as an all park solution had always been preferred. He added that the Justice Department had supported the Commission's authority to recommend that nothing be constructed on a site. He said the final decision in this case would have to be made by the District Government, which would have to take into account many factors the Commission could not speak to. At least, if the decision were made to allow the development, the Commission could feel that it had reviewed the project carefully to insure that it would be the best possible from the viewpoint of the appearance of the city.

The Chairman then polled the members, asking for their comments. There was agreement that there were merits on both sides and that it was a difficult decision; however, all indicated their positions had not changed, and so the March vote to deny a permit was reconfirmed.

Exhibit A-3

2. Shipstead-Luce Act

a. S.L. 81-39, 409-411 12th Street, S. W. New construction, office building, resubmission; preliminary plans. Staff member

Jeffrey Carson pointed out the location of this triangular site and explained to the new members that this submission was for an enlarged and slightly simplified version of a project which had received preliminary approval in June 1980. He said an existing structure would be removed and the new building would be extended along Twelfth Street and would incorporate an existing PEPCO substation. Architect Arthur Cotton Moore was introduced and discussed his design. He commented on his attempt to strengthen the axis of Maryland Avenue by the use of domes on his building, repeating the form found on the Jefferson Memorial and the Capitol, the two major buildings on this axis. There were no objections to the revised design, and the preliminary plans were unanimously approved.

b. Appendix 2, approved.

B. Department of the Treasury, Bureau of the Mint

1. CFA 7/APR/81-1, Gold Medallion Series; revised designs for Willa Cather medal.

2. CFA 7/APR/81-2, Gold Medallion Series; revised designs for Mark Twain medal.

Staff member Sue Kohler reviewed the previous submission of these designs in July 1980. She introduced George Schafer from the Mint; he said that since that time the artists had been able to devote additional time to the designs and had made some minor revisions which they felt had improved the quality. The Commission members inspected both the old and new versions and agreed the new designs were better. They were unanimously approved.

Exhibit B

C. National Park Service, National Capital Region

1. CFA 7/APR/81-3, Federal Reserve Building grounds; temporary sculpture exhibit. The Chairman explained for the benefit of the new members that for the past few years the Commission had been approving the use of the Federal Reserve Building grounds for temporary sculpture installations. He said the sculpture was selected by the Federal Reserve's curator, and the Commission's approval was for the temporary installation, and did not imply critical approval of any specific piece. Curator Mary Ann Goley was introduced and showed the members photographs of a steel plate sculpture by California artist Marshall Borris. Its temporary placement on the grounds was unanimously approved.

D. Pennsylvania Avenue Development Corporation

1. CFA 7/APR/81-4, John Marshall Park; preliminary plans for park development. John Marshall Place, N. W. The Secretary introduced Ron Eichner from PADC who discussed plans for the eastern section of the avenue, including Market Square, a memorial area for Navy Band performances, and the Indiana Avenue development, the latter of which

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had been seen informally by the Commission at the previous meeting. Landscape architect Carol Johnson was then introduced and discussed her design for John Marshall Park, which would adjoin the new Canadian Chancery on Pennsylvania Avenue. She said John Marshall Place, which runs between the avenue and C Street, would be closed; except for a one-way lane into the parking area in front of the U. S. District Court it would be landscaped as a park. There would be a bosquet at the high end toward C Street and the vista from the Old City Hall to the Mall would be kept open and emphasized. Gardens, areas of grass, and places for people to sit and have lunch would be provided. The members were pleased with the preliminary plans and they were unanimously approved, with actual planting schemes to be submitted later. Exhibit C

At this point the Chairman commented on the bright red awnings already in place on the kiosk in Pershing Park. He said the color was very discordant with the green foliage, and asked Mr. Eichner if anything could be done to change the color--perhaps to tan, yellow or white. Mr. Eichner said a number of people had commented on this and he would see what could be done.

The meeting was adjourned at 2:10 p.m.

Signed,

A handwritten signature in dark ink, appearing to read "Charles H. Atherton". The signature is fluid and cursive, with the first name "Charles" being the most prominent part.

Charles H. Atherton
Secretary

7 April 1981

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something that the administration has a very clear position on and we are trying to coordinate it with the administration before this Commission grants its final report. We are really not in a position to take any action on this at this time.

CHAIRMAN BROWN: Let's move then to Submissions and Reviews. First on our agenda, which comes under the Old Georgetown Act, is 81-87, a proposal by the Georgetown Harbour Associates for a waterfront development. Do we have anyone here to comment from the proposer?

I should say in introducing this that we considered this at our last meeting, and although the submission was in the form of a final preliminary design, zoning approval had not been achieved. The proponents asked that we vote on whether the Commission would actually recommend to the Mayor a permit or not under those circumstances. We at that meeting had a vote and the vote was that we not recommend such a permit, and our action is reflected in our official letter to Mr. Moore, the Department of Housing and Community Development of the District of Columbia Government. Perhaps, just for the benefit of everyone here, since some of you are not aware of this, it might be helpful to start the discussion by simply entering this letter into the record, and I will read it so that everyone is on the same wave length as to where the Commission stood at the last meeting.

"Dear Mr. Moore:

"At its meeting on March 10, 1981, the Georgetown Harbour Associates again brought in plans for a large-scale, mixed-use project at 3020 K Street, N. W. on the Georgetown waterfront. For purposes of identification, the application was numbered O.G. 81-72 and dated February 26, 1981. The applicant stated that the final design and construction documents were virtually complete, that they expected to receive zoning approval within a very short time, and expressed their interest in the Commission taking formal action as to their position on the recommendation of a building permit. The Commission recognized that the application had been filed as a final preliminary review, and that zoning review by the District of Columbia Government would have to be completed prior to the developer's filing for the actual issuance of a construction permit.

"After a review of the Commission's previous action on this proposal, and after hearing extensive testimony by both the developer and opposing community groups, the Commission voted to recommend at this point against the issuance of a building permit.

"Many reasons for the Commission's position, which has not changed since this corporation's proposals have come before it, are already well known to you through our previous reports. While we have responded to requests to comment on designproposals as they have evolved in the event that the

District Government should decide to proceed with construction, we have consistently emphasized our belief that this land should be developed as recreational space compatible with the open park setting of other lands adjoining the Potomac River. In our view, commercial development should be held to a minimum and, ideally, would be limited to those uses that would reinforce this space's basic recreational character, such as a restaurant, boat house, or other such functions.

"We have also requested that there be concrete and binding evidence that D. C. lands adjoining the site on the west would be transferred to the National Park Service. As we stated in our April 22, 1980 letter to the District and which we recited again in our October 20, 1980 letter:

"Before the Commission gives its final approval, however, we would like to have a firm commitment from the Federal and District agencies on developing all remaining lands south of K Street as part of the National Capital Parks system. There have been references to such an agreement at various times in the past, but none of them has been binding, including the task force agreement that was put forward last summer. Since there does not appear to be any obstacle to the transfer of the land west of Thirty-First Street to the National Capital Park system, we recommend that the District Government undertake at

the earliest possible time the necessary steps to accomplish this end.'

"In response, in the District's letter to the Commission of February 27, 1981, Mr. Gibson expressed his personal commitment to achieve creation of the proposed public park at the earliest opportunity. But no concrete action affecting the transfer has yet occurred; the National Park Service has not pledged to receive and maintain the land as park, and the developer has not provided to us a written commitment of a perpetual easement for a public right of way along the water.

"Until these steps are actually taken, or at least firmly committed for action, upon or immediately subsequent to the grant of any permit for construction, the Commission could have no assurance that the developer's plan, which includes the development of parkland, as well as commercial development, would ever be realized.

"I should also mention that one of the fundamental elements of the design that the Commission hoped might mitigate the effects of development was the inclusion of a boat basin for small craft. It could have served as at least a symbolic link with the past when the waterfront was an active port. Such a feature was consistent with our recommendations to provide recreational uses; yet the current plans presented to the Commission failed to include the basin. Instead there was a decorative pool with no connection to the river. The developer

stated that it was still their intention to construct the facility at some time in the future, but again no evidence was offered to support the developer's claim.

"Finally, the Commission has been advised by the Justice Department that Executive Order 11988, regarding federal agency actions involved with development of floodplains, does in fact apply to the Commission of Fine Arts. The order essentially requires that all federal agencies 'avoid direct or indirect support of floodplain development for the purpose of reducing the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains.' It should be noted that this opinion was received after our report to you on this project's previous submission on October 21, 1980. I am enclosing a copy for your information."

So, let's move ahead then. In view of the fact that the developer has requested an opportunity to go into this project in greater detail, we felt that, in all fairness, we should give him a hearing on it, and we will call upon him to inform us of anything that he would like. Who would like to lead off?

MR. MILLER: If we may beg your indulgence a minute, we have to set up some slides.

(Record temporarily suspended)

MR. MILLER: I appreciate the opportunity very much

of addressing the Commission this morning. I must say that during our last hearing that we probably erred before the Commission in not giving you the full background, realizing there were five new members of the Commission, and realizing the complexity of details of this project. We should have gone into a history of the past so that you were well versed in it, and that we will attempt to do today, to present the historical fabric of the Georgetown waterfront as relating to this site, and the overall concepts.

We believe your letter served a very useful purpose, and we intend to respond to it today. We did hand you a packet of letters and information that we feel come a long way to responding to your questions and concerns. We are aware of your all-park objectives and as a resident of Georgetown and the District, I have always favored parks. We believe this approach we are taking, one that has taken many years of government actions, is the only park solution, the only practical one, the only realistic one for decades to come, and that what we are presenting is initially an historical fabric of this area, and then I would introduce Arthur Cotton Moore to answer any questions on architecture, and then we have a series of speakers relating to this.

First, on the waterfront: The Georgetown waterfront
port
was an historical point, as Mr. Brown said, and it is our objective to reinstate it. For decades it has been an historical

port. For the last 20 years there have been over 20 studies of the waterfront, every one purporting to solve the problems of the waterfront. In 1965, for example, the Georgetown Planning Council said that neither Georgetown citizens nor planning and city officials have been able to agree on a united course of action for this deteriorating industrial area. The citizens of Georgetown are now united behind our objectives and proposals. Sixteen years later it is still a slum.

Interestingly, all of the development you can see on the master plan proposes development south of K Street in conjunction with open space and green area. Even the Citizens Association Board report in 1980, as in 1969, says that the Georgetown waterfront is as much an eyesore as it has been for many years; however, 1968 may well have been a watershed year and there is real hope that the waterfront within a few years may present a different appearance. Unfortunately, it doesn't.

Another statement is that the waterfront renewal, which is an integral part of Georgetown, has been urged by the administration, the National Trust, the AIA, and important bodies will continue to fall victim to disagreement between the Congress and the District of Columbia Government, NCPC, and various government agencies. Commercialism plays its part, as well. The approximately 90 acres comprising the waterfront south of M Street is valued today at 30 or 40 million dollars. By 1980 its value will be astronomical.

Again more studies, all proposing combining development and park south of K Street.

This is your own report in 1973, which emphasized the fact that it was heatedly argued in the news media and public hearings about the waterfront's future. Again more studies, combining park and development. Again this is the '72 study, talking about the waterfront and putting in development. Additional studies year after year, all of them with a balance between park and development.

Finally, in 1973, the Inland Steel Corporation presented a plan before Fine Arts for a 90 foot building. This is not the official submittal plan, which is back in the archives somewhere, which was actually approved by your Commission for a 90 foot building along the waterfront. I think it had more of a park edge on the approved version.

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In 1964 the District of Columbia down-zoned the waterfront from its archaic industrial use to waterfront zoning south of M Street from 9 million feet of development to five and a half million feet of maximum development. The Citizens Association of Georgetown, as well as the National Capital Planning Commission disagreed and in a report, the Georgetown planning group report, it was adopted by the citizens of Georgetown, the Citizens Association of Georgetown. That report proposed 2.4 million feet, or approximately half of what the District down-zoned it to. In the endorsement by

the Citizens Association, it then called for support of the plan by the Georgetown Planning Council, which proposed again development and park on the waterfront, and as you can see from this, this is very similar to the plan developed and approved by the task force, which is park and this triangular development.

The Citizens Association sued the District because of the rezoning and in '78⁷ '68 lost that suit, and the property owner's rights were upheld to build maximum density on the property, up to the 90 foot buildings on the water's edge.

MR. NETSCH: Would you go back a slide and be certain every member of the Commission knows the boundaries of the parcel you are talking about, because that is as good a picture as we will get of the site.

MR. MILLER: This is an older picture --

MR. NETSCH: It shows the whole river.

MR. MOORE: This is Rock Creek. It is this big triangular area here.

MR. MILLER: The citizens then turned to Senator Mathias requesting a bill, which he submitted, to turn all of the land south of the C&O Canal into a national park. That bill resulted in some brouhaha and resulting determination by the Senator that he should concentrate his efforts south of K Street. He formed a task force of the Secretary of Interior, the National Park Service, the National Capital Planning

Commission, the Mayor's office, and initially, I think, your Commission was on it, and the private developers and citizens were involved in quite a few meetings with that. In support of this solution, which was the park development combined solution, Senator Mathias said that a consensus of developing about the immediate Georgetown waterfront south of K Street to the waterfront has been determined. He hoped the Mayor shares his enthusiasm for a Georgetown waterfront park that would evolve from this task force.

The task force continued deliberations for several years, the Washington press reported Senator Mathias as calling it a love-in, but the objectives were to bring together the property owners and, as a matter of fact, Senator Mathias personally contacted Inland Steel and got them to agree to work with us in the sale of their property, when they were initially argumentative about this agreement to reduce their density.

This is a letter from Secretary Andrus, which is to the Citizens Association, in support of the task force solution, which stated: "At this time there is little support in the administration or the Congress for expenditures of this kind," which was for an all-park. "We have had to make some hard decisions recently in this Administration. Thus, in the context of extreme fiscal restraints, I must continue to support the

conclusions of the task force which today would appear to minimize expenditure of federal funds and achieve a park area along the waterfront, which will protect the gateway to the nation's capital, as well as provide recreational opportunities for its residents."

Finally the task force agreement was signed.

Basically it provided the low level of development--approximately 50 percent as a matter of right--provided parkland along the waterfront, 15 acres, as compared to the total land area of 18 and a half acres, and provided the continuation of the parkland.

I am sorry -- I need a bigger screen or smaller projector. But, basically, the design objectives were to terrace from the water up, provide an architectural edge to lower Georgetown.

MR. NOVAK: Can you turn that back a minute?

MR. MILLER: Suppose we don't use the screen, but just put them next to each other.

These were the objectives of the task force, urban design objectives and park objectives. Remembering that the principal objective is to achieve a 15 acre park, with no cost to the government, what we feel is the park solution, what it produced is the development of a triangle of land, an average setback from the Potomac, with 160 feet of parkland.

This was then submitted in an architectural plan in

December of 1979 to your Commission. In signing the agreement, Secretary Andrus said that this will set in place the last remaining gem in the necklace of federal parkland that stretches for 200 miles, and he also stated that the Park Service will provide management skill and manpower to develop and maintain a park.

And Senator Mathias said that the project demonstrates the possibility inherent with intergovernmental cooperation.

The design was hailed by the news media as a solution to both a sticky and difficult and long-term problem on the waterfront. Mayor Barry acknowledged and gave his support, and Gibson, signing the project in his name, said, "As you know, I am committed to seeing positive results from the agreement."

Tom Wright, senior member of the Georgetown Advisory Board, said, "The waterfront concept is exciting and I think correct. Getting people across the Freeway to join the new action which you create is a crux, and you will do that by having them live there, do business there, eat and play there. You will also draw other people down from Georgetown and across the west end of the Potomac."

That plan was architecturally prepared at a cost of approximately a quarter million dollars to us, and rejected by your Commission. In the letter to the Mayor's representative

you stated that you concluded that you cannot approve the project in its present form and recommended that a thorough redesign, restudy of the design be made, with a fresh look and different architectural approach.

We made a decision to continue the spirit and intent of the task force and retained a new architect, Arthur Cotton Moore. In a letter to the City in February, we reaffirmed that you called for a totally different approach, and we committed ourselves to the task force spirit--the spirit of the task force. What was produced is Arthur Cotton Moore's plans, which are in front of you. That was submitted to your Commission in March of 1980, over a year ago. As you can see, it replaces the industrial slum with a development of an average of 4.3 stories in height, with 54 percent lot coverage. At that point we had a higher height of the building and in your recommendations you recommended that we reduce some of the height.

This is something that is sort of interesting. There has been a statement that the Mayor supports an all-park, which is his primary objective, but in the statement before the Subcommittee on Parks & Recreation of the Senate, made by Jim Gibson on behalf of the Mayor, he made some rather, I think, important statements, which are in the blue book we sent to you. You might want to look at some of the statements. The context of what it says is that there has been a major battle, over 30 studies have been prepared that he knew of, and that the

task force solution was achieved through very difficult and trying times to achieve that solution and that the assumptions were that no federal funds were available for park, no city funds were available, that the property owner's intent was to implement their development rights, and that the waterfront should not remain as is.

They, basically, had four options: The waterfront will remain as it is, it could be a light industrial area that will contribute little to the people of Georgetown or the District; we can negotiate a framework for a park and controlled development, limiting height and bulk, preserving waterfrontage for a park and increasing residential uses; we can acquire all of the land for a total park presence on the waterfront.

As was said, Mayor Barry strongly prefers a total park on the waterfront. It would satisfy strong citizen interest and present a dramatic river entrance to Washington from the west. However, federal representatives made it clear federal funds are not available for the purchase of the land. Thus our efforts in the task force have been directed to achieving a negotiated agreement by which the waterfront becomes primarily park. Height and bulk are held below full development rights, commercial uses are subordinated to residential uses, and federal and district funds are not required for land acquisition.

The plan was submitted to the Old Georgetown Board and their recommendation was much has been done by the architect

toward achieving a lively entrance and style of variation of the architectural treatment of the facade, ranging from smaller scale residential on the east and west end of the project to the larger scale treatment around the full basin where the facade tends to a style more suggestive --

CHAIRMAN BROWN: Excuse me a second. Do you want to go back for a moment? Just to complete the record, it should be pointed out that -- this is my memory of the hearing -- that after that speech was made by Mr. Gibson there was some cross examination about what the District's opinion was and it was brought out in the hearing that yes, as was actually said in the speech itself, that the Mayor's position was that, if possible, the all-park solution was and still is his first choice.

I just wanted to make sure there is that understanding in the record, that that was brought out on the cross examination.

MR. MILLER: But the basic problem is, as Jim Gibson said, is that if federal funds are to be made available to acquire the waterfront, it should be done quickly. That was well over a year ago.

Here clearly is a pertinent home rule issue, where the complex and contradictory federal involvement in the City's fiscal affairs both dampen prospects to proceed with responsible revenue-generating development and also achieve clear

public purposes in that at the same time it sustains pressure on the City to meet rising costs with a reduced federal payment, charter limitations on taxing authorities, imposition of expensive dead end planning exercises, and the final statement, as you said, is that frankly we are concerned by the prospect of such diffusion in the delineation of the federal interest that no constructive progress can yet be made on this site so vital to federal and local interests.

As your group is, so is the Mayor. It is a difficult problem. He favors all park, but there is no money for a park and there is no prospect there will be money for a park. In the meantime, land values are rising and rising and are becoming astronomical.

As the Georgetown Board said, positive features were compliance with the reduction in excessive bulk and height which they asked for and it was submitted to your Commission with a totally different approach in March and, as Tom Wright said, it was a very fresh free-flowing development along the entire area. In terms of the generalized statement, as you indicated, you commended many aspects of the design, you reaffirmed your support for the all-park, and paraphrasing it, but if there was to be development, this was the kind of development you recommended, understanding that the height and the bulk needed to be reduced, and the submitted response to the Mayor's representative, that was your general response.

We then redesigned the project, reduced the height some 20 feet, and, in summary, it is sort of interesting to note that the maximum density, we cannot go to the maximum density because there is an easement on the part of the Chessie property; we can only go, technically, to 95 percent of our capacity, and we have made a 55 percent reduction, which is less than the task force. For example, Foggy Bottom is 6 FAR and much of the waterfront is 4 and 6, so there is a substantial reduction in density. The lot covered 54 percent, with over 2.7 acres being devoted to public use, plus a ^{half} acre being reverted to federal ownership. We also committed at that meeting in April to build a park from 31st Street to Wisconsin Avenue.

At the April meeting the architect and the developer tried to respond, to reduce the height, as Mr. Wright indicated. I think this is an important point. As you know, the Georgetown Board reaffirmed your original desire that this land be a park. We also recognize that there are many possible financial and economic and political reasons why it may not be a park. If it is to be developed, we felt unanimously that this was a splendid development so far as the architecture is concerned. And your response reaffirmed or affirmed the Old Georgetown Board recommendation, with repeated emphasis that you would like to see all park, but if there cannot be all park that this approach should continue into further development drawings.

This is the referral letter to the Board, in which one senses the Commission recognizes the possibility that funding may not be available despite widespread support from the community and members of both houses of Congress. It is in this context that the Commission has devoted considerable time and effort toward improving the design of the development, in the event it is to be built.

Later that year a letter was received from the Chairman of that Committee, Dale Bumpers, Senator Bumpers, who indicated there was no money available for the park. But in our commitment to you in March, we agreed not only to build the parkland on the land adjoining, the 2.75 we are donating, plus a half acre reverting, plus building a park all of the way to Wisconsin Avenue. The expenditure of money for that is four million dollars by us in the private sector for parkland.

CHAIRMAN BROWN: Do you want to clarify for the record who owns that piece of land?

MR. MILLER: The land from there to the west is owned by the District of Columbia Government. The land from the east is owned by Inland and Chessie. 2.75 acres from 31st Street east is private property, valued at \$24 million, according to our appraiser, plus the parcel to the far right, which is the mole property of a half acre, which will be reverted back to the federal government. The railroad has the right to perpetual use of that property.

These are some of the park concept drawings which we agreed to spend the money to build.

In late 1980, at your request, letters were transmitted between the District and the National Park Service and the letter to the National Park Service, Mr. Gibson said, "This is to assure your Department that the District of Columbia Government intends to transfer the District owned land along the Georgetown waterfront, approximately between 31st Street and Key Bridge, to the Department of Interior for park use", and in accepting these lands, Jack Fish, the Regional Director, said, "We are eager to accept jurisdiction of this property and look forward to working with you in the immediate future to expedite the actions necessary to consummate this transaction."

We then developed and submitted in October some brick samples and we also did some designs of what we could do under the Freeway to make it more attractive and responsive, and in that submittal the Old Georgetown Board recommended that development of working drawings and construction details closely follow the preliminary design. The Board also gave preliminary approval to a number of brick samples proposed for various elements of the development and recommended construction of sample wall panels showing mortar color and jointing for final inspection prior to ordering materials, and we proceeded with those recommendations and proceeded with working drawings and

in your submittal, your response to the Mayor's agent it was pointed out that full working drawings and on-site material samples would be required prior to any recommendation for permit issue.

Since our last meeting, our working drawings have cleared zoning and today they are, technically, being submitted for final review by the District of Columbia Government of those drawings. We believe the drawings are the same as submitted in the previous submittals to you, both preliminary drawings and conceptual drawings, material samples. We proceeded in good faith from there and have prepared those drawings.

One of the concerns we had is as to their support or non-support in the City for this concept. We retained an independent polling company in November, who polled 507 people at random in the District residences as a survey toward city-wide attitude about problems facing the City, about development in general, and at the site. We thought we would share that with you. Two out of every three people in the City supported the Georgetown Harbour solution, which is the result the task force favored. Forty-seven percent favored it and 23 percent opposed. Once that information was briefly described to those people who had not voiced an opinion, the same two to one ratio held, and it shows in every ward, including Ward 3, which recommended favoring the project.

One of the reasons was for the 8.6 million annual revenue for the District and the 1,400 jobs.

Again, there is editorial support from the newspaper on this concept, and in a hearing before the City Council relating to floodplain issues, Jim Gibson stated that the proposed development reflects considerable planning to safeguard against flood damage and would comply with all existing provisions of the National Flood Insurance Program.

I want to add we have flood experts here and attorneys to deal with that issue after my presentation.

The Department of Interior, the Secretary of Interior, at the end of the last administration, reaffirmed his support of the task force solution and our implementation of the park development concept. Again in the letter to you in February, which you referred to in your opening statement, Jim Gibson stated that they are proceeding toward a transfer and gave his commitment to have that occur.

In terms of the submittal to you last time, the Old Georgetown Board has found that the present designs conform to the previous preliminary design and they affirm their previous approval, and this is where we are today, and these are the answers that we are trying to deal with. We believe we have answered your questions, answered your concerns, and have today the responses to your letter highlighting some of the concerns at that point in your last meeting when you were

not recommending the issuance of the building permit. You wanted several things, one of which was steps to be taken, or at least firmly committed, for the transfer of the jurisdiction of the property west of 31st Street. In your possession, in the packet I gave you, I believe is a letter from the Mayor which commits him to the transfer of the property. If not, Arthur has a copy of that.

CHAIRMAN BROWN: They can submit that for the record at this point.

MR. MILLER: The other point is you felt that the boat basin was an integral part of our submittal and that you needed evidence that there was support for the developer's claims that it will be constructed in the future. Our plans as submitted contain the full working boat basin, and we have a letter from the Corps of Engineers saying they are happy to work with us towards the stage of permitting process for the boat basin. The question of Executive Order 11988 will be addressed by our attorneys. We did find a serious mistake in the interpretation of the Justice Department. We will go into that. I think you were handed some of the legal opinions within the last week.

Our objective is to develop a park, and that, as Mayor Barry's letter says, the process of such transfer is underway and it is continuing at this time. Although the process is a time-consuming one, its completion will result

in the effectuation of the transfer. This is what you asked for, and this is our objective, too. We want to see the park and development concept. We want to see 15 acres of park.

I might add, also, that our appraiser has delineated in green, the two shades of green, the 2.5 acres of park and publicways. As you know, Virginia Avenue -- there are public streets in the District being turned into pedestrianways solely, with all cars to be underground, and the light green area will be the introduction in the private property of publicways and vistas, so you have complete vistas to 31st Street, Thomas Jefferson and Virginia Avenue, plus the areas across there. In the far right is the famous mole property, which is in perpetual use by the railroad.

One of the things we thought was interesting in terms of park ratio was we did an analysis and there are 853 acres of parkland adjoining access to Georgetown and that ratio is 13.39 percent higher than the national recommended area average for urban parks, so Georgetown is a land of parks, and we intend to increase that, working in conjunction with the District.

As I indicated before, this concept of developing urban development in concert with the park, 82 percent park, 18 percent development, is a concept that we think is good for the site. A low level of development, terracing up to lower Georgetown, which are basically high rise buildings,

keeping 30th, Thomas Jefferson, 31st Street open, with vistas and pedestrianways, introducing a whole new element of pedestrianways through Virginia Avenue, along the monumental corridor to Virginia Avenue, and along Wisconsin Avenue.

Now it is certainly in vogue to make waterfront property, usage of waterfront in combination with parks throughout the United States, emulating what has been done throughout Europe in the past.

This is a study done by the National Endowments for the Arts and the view is Baltimore. I remember ten or fifteen years ago we used to laugh about Baltimore in Washington, and now it is a good example of good urban planning. Certainly the densities we are dealing with are not the same as Baltimore, but they have the same floodplain issues and they have developed a most interesting urban context along there, along their harbour, and we feel we can make this exciting here, as exciting a place as they have done in San Francisco and Boston and most other major cities, as well as in Europe.

Now this is an editorial in the Post and a Channel 9, WDVM editorial recently which indicates that at this point the District needs development of lower Georgetown, that other cities can manage to integrate green space into similar kinds of development and that it can be done in Georgetown, too.

We are right now in a position where we feel that the only park solution is the park solution that we are propos-

ing, which is the 82 percent park solution.

In the letter by Secretary Watt, he states:

"Dear Chairman Brown:

"I have followed with interest the recent action of the Commission of Fine Arts with respect to the proposed development of the Georgetown Waterfront. Accounts of the action which I have read appear to suggest that the Commission's recommendation was based upon an assumption that Federal purchase for park purposes of the tract was a viable alternative to the then pending proposal.

"I would like to make clear that the Department of Interior neither has nor intends to seek acquisition funds to purchase the property for park purposes. This position coincides with the Administration's belief that scarce Federal resources should be focused on revitalizing and upgrading existing parklands.

"This Department will, of course, continue to cooperate with local government and private concerns to assure an orderly development and utilization of Georgetown waterfront."

We as a developer and as a Georgetown citizen and company based in the City --

CHAIRMAN BROWN: Excuse me.

MR. NETSCH: I was asking for the record if we re-

ceived this letter.

MR. MILLER: I assume so.

CHAIRMAN BROWN: Where is the original of this letter?

MR. MILLER: I assume it was mailed to you. Maybe the Interior Department is efficient, but the Postal Service probably isn't.

CHAIRMAN BROWN: We will get it eventually.

Go ahead.

MR. MILLER: We acknowledge your support for an all park, the same way we acknowledge the Mayor's. The Mayor indicated this is a very thorny problem, a difficult problem, and we feel the solution today is a solution that the park proposal that we have is maybe the only one that will ever happen, which is 82 percent park, which is a low level of development.

As an urban planner, I happen to think development, people to live and work and shop in conjunction with a park, it is actually a better concept than all park, especially when the waterfront is cut, isolated from Georgetown by the elevated Freeway, which we gather will be there forever, and especially in this site, where there is this ugly concrete freeway. It is our feeling a low level of development will provide a draw to people, to bring the people back to the waterfront, back to the port, back to the area, so the concept of having this development in conjunction with the park helps to re-enforce a good urban contest of interrelationship between the Potomac

River and Georgetown. We reaffirm our commitment, as we have done in the past, to work with you, to work with the City, to work with all federal agencies. This has been a difficult process for all of us. We have made major concessions. We have given up almost 50 percent of our development rights, of our land area. We have expended over four million dollars to build park facilities, since the Park Service doesn't have the budget for it. We feel these efforts, which have gone on for year after year, will finally bring the thorny problem of one of the ugliest areas of the City into one of the most attractive.

CHAIRMAN BROWN: Thank you very much.

MR. NETSCH: Mr. Miller, for my information, the letter you have just given us to Mr. Pascal has a scheme "A", scheme "B" and a scheme "C" for the boat basin and it says the Department of Army permit would not be required for scheme "A" of the boat basin; however a Department of Army permit, under current regulations, is required for scheme "B" and "C" of the boat basin, pursuant to aforementioned laws. Could you please explain that to us?

MR. MILLER: Our project manager is John Pascal. He happens to be project manager of both Daniel Hall and Harbour Place. Prior to that he was a colonel in the Corps of Engineers for 28 years. He was working with General Letellier.

What we are talking about is our plans call for a

full boat basin, with boat access. We are planning the boat basin, scheme "A", which has a full boat basin, but with boat lift access, rather than direct connection. That requires no permit. It is our objective to have direct connection, but as typical governmental approval, it will take time to get to that.

I think General Letellier can deal with that issue.

GENERAL LETELLIER: It was to determine the jurisdiction of the Corps of Engineers, to see if there were any late laws since my departure some four or five years ago, to determine what the current federal interest of the Corps was as far as this is concerned and it was theorized, and this was sitting around the table and is not a formal plan--just sitting around the table saying if the boat basin were filled by City water and were discharged through normal storm drains from the City, what would the Corps of Engineers' interest be in that type of project. The answer is none.

The next would be the flushing of the basin, that is, filling with Potomac water, using Potomac water to fill and discharging through an outlet, which would be in and out, using Potomac water to fill the bay. They would require under that case an 11899 Section 10 permit and they would also require under that a 404 permit.

We asked then with the actual plan what would be required, and there is no difference in the Corps of Engineers'

requirement for both access and the permits required than there is just using Potomac water on the inflow and outflow. It is just merely a sequence of alternatives to find out where the threshold of the Corps of Engineers' jurisdiction was.

MR. NETSCH: You are applying for which basin though? Your drawings are for which basin?

MR. MOORE: It is "C", the full boat basin. The boats would be going in and out, which is in the formal set of drawings approved by Zoning. That is what we are proposing, and only that.

MR. NETSCH: That is the four foot deep basin?

MR. MOORE: Yes, four feet of water and access in and out.

GENERAL LETELLIER: The Corps was also informed in its briefing that the developer's plan was "C", which was full access to the boat basin, without the in and out water --

MR. NETSCH: Just so I can understand -- there are so many alternatives -- this plan that has been submitted, Mr. Moore, does not require a permit from the Corps of Engineers?

MR. MOORE: It will require a permit.

MR. NETSCH: It will require a permit?

MR. MOORE: Yes, which we will proceed to get, like we will have to get a Health Department permit on the restaurants and --

MR. NETSCH: I understand.

CHAIRMAN BROWN: The Corps of Engineers, as a federal agency, they would then, presumably, come under the same floodplain question as any other federal agency?

MR. MOORE: We will have somebody address the floodplain.

CHAIRMAN BROWN: And the environmental impact thing, and so on?

GENERAL LETELLIER: To assume they would deny the permit because of the floodplain is an incorrect assumption because within 1980, for example, they have issued a permit for the expansion of the Pentagon Basin and since the passage of the Federal Environmental Policy Act, the National Environmental Policy Act. They have issued permits both in the Washington channel and ^{Bolling} Boeing Air Force Base for expansion or addition of the basin space.

MR. MILLER: We got into the floodplain issue and legal issues relating to that. I would like to have our attorneys deal with that.

Prior to that, Mr. Ed Hoffman, from the Federal City Council Waterfront Action Committee task force -- there is always a task force -- would like to say a few words. Unfortunately, he has a time constraint, so I would like to have him speak to you now.

CHAIRMAN BROWN: Fine. Welcome to the trustee of the Federal City Council.

MR. HOFFMAN: Good morning. I am pleased to be here.

My name is Edwin J. Hoffman, Chairman of the Board of Woodward & Lothrop and Chairman of the Federal City Council's new waterfront task force, which was created earlier this year to review public and private planning with respect to the waterfront and encourage greater use of the river.

The Federal City Council is a non-profit, non-partisan organization dedicated to improving the nation's capital. It is composed of and financed by approximately 125 business, professional and civic leaders. The Council has been active since 1954. It works with all levels and branches of the federal and local governments in the Washington area to facilitate community development that serves both local and national interests.

About fifty of our members have been serving with me on the waterfront task force. We are currently reviewing the status of various plans and acquainting ourselves with the issues, opportunities, and problems, exploring the feasibility of the many proposals that exist for increasing public use of the river and enhancing our waterfront. Unfortunately, our task force has not had an opportunity to consider fully the position taken by the Fine Arts Commission at its last meeting with respect to the Georgetown Harbour Associates proposal for enhancing the waterfront in the Georgetown area.

Just prior to your last meeting we did receive a

briefing by the District of Columbia Government and by GHA with respect to this project. At that time we believed your March 10 meeting was essentially a pro forma one. We thought the developer had made the accommodations necessary to meet the Commission's previously expressed concerns with design, height, and density. We were quite impressed by the plans which the developer prepared, based on earlier approvals from your Commission. Frankly, we were stunned to learn of the Commission's decision that advised against this project.

It is our understanding that the primary basis for the Commission's action was a desire to have the entire Georgetown waterfront become a park.

Since a number of you are new to the Fine Arts Commission and come from outside Washington, I would like to explain for a few minutes this morning why I feel the Fine Arts Commission should reconsider its action. I want it clear that this represents my views and not necessarily the views of the task force or Federal City Council, as they have not had a chance to really fully review your action.

Also, as past president of the Greater Washington Board of Trade, I talked to members of our staff and other members of the Board who also share my opinion. First of all, the park solution is impossible without substantial public investment. I have heard statements ranging from 40 million to 94 million dollars for public acquisition of the privately

held land in this area and where is this money to come from. The District Government is in serious financial difficulty, teetering on the brink of insolvency. It can ill-afford to buy a park.

The Reagan Administration announced it will not be purchasing additional parkland, and with the Federal Government rapidly cutting government programs in a bipartisan fashion, it is foolhardy to imagine soon millions of dollars will be available to purchase parkland for Georgetown. I understand Senator Hatfield is supporting a measure to allow the Park Service to acquire the Georgetown waterfront as a park. It may be that Secretary Watt will find a way to propose the granting of development rights in Yellowstone National Park to Western Development Corporation and the mineral rights of the Grand Tetons to CFX Corporation in exchange for the land in Georgetown. In any case, the developers clearly indicated such a land swap is impossible.

Being a realist, the all-park solution I have to conclude is wishful thinking. We don't believe public funds are available to bring it about.

My second point is 15 of the 18 acres on the Georgetown Waterfront will be devoted to park and open space if you approve the present plan. This additional acres of Georgetown Park system is available at no cost to the District or Federal Government. You are not asked to take a half loaf, but you

are being given 5/6ths of a loaf absolutely free.

Georgetown is ringed with parks, big and beautiful parks - Dumbarton Oaks and Rock Creek. The GHA proposal will just about close the loop. Because of the newly created pedestrian access all along the waterfront, citizens and visitors will be able to circle Georgetown in a park setting. They will also enjoy nearly 3,000 acres of public, open space adjacent to our waterfront here in the District, along with 5,000 acres in other areas in the City.

The City needs responsible, economic development. In an era when City services are being cut back, when existing tax payments and threats of even higher assessments are forcing people to consider leaving the City, responsible economic development ought to be undertaken.

In its waterfront, the District has a resource to increase public and recreational facilities and stimulate economic development. I am sure we have learned from Boston's Quincy Market and Baltimore's Harbour place that such development can be tastefully done and in a manner fully compatible with its surroundings. This relatively moderate proposal has been scaled back to fit almost perfectly the Georgetown citizens' demands of a few years ago. It meets legitimate concerns for decreased density, limitation on height, compatible, creative design, public access to the waterfront, and sensitivity to its unique location.

This development will add significantly to the City's tax base and employ its citizens, provide housing for residents, and create services for the residents and visitors alike. The District cannot afford to miss this opportunity.

Now, I encourage you to reflect on the impact of your decision on further development in the City. In this case, the developer made a good faith effort to work with citizen groups, the City Government, and your Commission to reach a creative and responsible solution from widely diverse interests and concerns. Your Commission rejected one plan and the developer hired a new architect and began again. When height and density was not to your liking, the plan was changed to meet your concerns. When concerns about the floodplain were expressed, that was dealt with by extensive research and design safeguards. In short, the developer in this case has done all you have asked them to do. To turn the project down at this stage, after years of effort and millions of dollars of investment on the grounds that the citizens and the Commission would prefer a park, for which there is no money, is to make a mockery of citizen participation and a travesty of the administrative process. This lesson will not be missed by other prospective developers that may be considering Washington for investment purposes.

Finally, I want to express my concern that your action, admittedly advisory, may cause the District Government

to fail to issue a building permit. In combination, these two decisions might well be seen by the courts as inverse condemnation, taking without due process or just compensation. If that should occur, the District Government could well be forced to acquire the land against its will, an action that could spell financial ruin for our already hard-pressed government.

Frankly, your action has placed the District Government between the proverbial rock and the hard place. If it follows your advice, ^{that} the places them in jeopardy of a lawsuit which might require it to purchase the resource. Surely this Commission does not want to be in the position of saddling the District Government with up to \$94 million of debt. If, on the other hand, it fails to heed your advice and grants the permit, the unfortunate result would be to diminish this Commission's significance and force as an advisory agency.

It seems to me a more responsible course of action might well be to approve the design, assuming it is satisfactory to you, recognizing the all-park solution is impossible of fulfillment. In any case, I hope you will decide to reconsider your action to take into account some of the concerns expressed here this morning.

Thank you.

CHAIRMAN BROWN: Thank you very much.

MR. HOFFMAN: I took longer than I thought I might.

I am sorry.

MR. MILLER: Thank you, Mr. Hoffman.

MR. MILLER: One of the things we wanted to address is the land values. We brought our appraiser with us today, Mr. Hoss, who has done a recent appraisal on the value of this property.

MR. HOSS: Mr. Chairman, ladies and gentlemen, my name is Richard Hoss. I am a professional appraiser, and was hired by Western Development to take a look at this property in the light of establishing the land value. Because of the time element, we have not completed the formal appraisal, but have indicated a range in value of this particular land under developing it for its highest and best use, which amounts to approximately 1,420,000 square feet. Of that 1,420,000 square feet, approximately 1 million is broken down into commercial and the balance of that 1,420,000 is in residential. This is in conformity with the zoning that now exists on the site.

As you know, the site is split between W-3 and W-2. That configuration allows for a certain portion of commercial and another portion of residential.

The tact in developing this land value to indicate this range was a residual method. It is an improved appraisal technique, and what it does, in sum, is develop the land to its highest and best use vis-a-vis the commercial and residential, and in this sense it constructs a building, commercial

and residential, on the site, develops the cost of the building, takes off the income imputable to the building, and the residual left is the earnings that the land comes up with. That earning power is then translated into a value by the capitalization approach.

The building costs used in this overall configuration was approximately \$125.00 a square foot, which represents hard and soft costs. The commercial rates used at the time of this appraisal or this analysis was approximately \$30.00 a square foot, which is certainly in keeping with the pre-leasing summaries now available in the District of Columbia for new office space. The condominium or residential portion was indicated at approximately \$200.00 a square foot. Anybody trying to buy an apartment in the configuration of the waterfront area -- Watergate, in particular -- certainly knows \$200.00 a square foot is not out of line, especially with a project coming on line two years down the road.

In the final analysis, the range indicated, which is subject to formal report, will fall somewhere between 70 and 95 million dollars. This lower range certainly is in conformity with the FAR asking prices in downtown Washington east of 15th Street, which are now running anywhere from between \$50.00 and \$60.00 a square foot.

CHAIRMAN BROWN: Just for clarification, I think Mr.

Miller, in his presentation, mentioned the appraisal figure of \$25 million.

MR. HOFF: That was \$24 million, but that was the dedicated park that you see in white or that was shown on the slide diagram, which estimated approximately 2.7 acres of land that was going to be dedicated.

MR. MILLER: The area, in general, is park and public ways that we are dedicating, which has a value of \$24 million, and the balance has a residual value, but if you had to buy the whole site, it is that range that Mr. Hoss has stated. There has been no value given for the rights on the Moll^e property that we mentioned.

CHAIRMAN BROWN: However, which is subject to easement.

MR. MILLER: The Moll^e property is not subject to easement, but this is. That is why there is a reduction of about 24 million.

CHAIRMAN BROWN: Thank you.

MR. MILLER: I would like to bring up Mr. Roger Clark, partner in the law firm of Rogers & Wells, as well as General Letellier and Dr. Sternberg, a PhD in Water Resource, and Mr. Reynolds, of Fireman's Fund Insurance Company.

I will introduce Roger Clark.

MR. CLARK: I am accompanied here by David Schwartz of the law firm of Melrod, Rebman & Gartlan, who assisted in

the preparation of the legal memorandum distributed to you. We have, essentially, distributed two memoranda, the first being by Mr. Schwartz, which sets forth the legal reasons why we believe the Commission is legally obligated to approve the final working drawings that have been presented, as long as it ascertains they comply with the preliminary designs previously approved.

Our position is based, briefly, on two points: first, that the authority of the Commission under the Old Georgetown Act is specifically limited to reporting to the District of Columbia Government in connection with permit applications, and I am going to quote from the statute: Quote - as to the exterior architectural features, height, appearance, color, and texture of the materials of exterior construction, which is subject to public view from a public highway.

Our second point is that these plans do conform to the preliminary design conceptually, as approved by this Commission in April, and further approved in October of 1980, even to the extent of preliminary approval of the brick samples. Indeed, the Commission did not merely approve the architectural development; it commended that development.

You will notice in the letter, your Commission's letter of October 20, 1980, which is Exhibit 35 in your package there, if you want to follow it, the Commission reports that the Old Georgetown Board of architectural consultants reviewed

the designs and reported it to the Commission, commending the architectural development, commending the architect on the planned structure for the site. Obviously it is commending the proposed development, if there are no funds available for acquisition for a park.

Now, having approved, and even praised the architectural development in 1980, in accordance with your regulation that requires submission of the preliminary designs, now, after the developers have obligated even more hundreds of thousands of dollars preparing working drawings to implement the approved designs, this Commission cannot, in our judgment, withdraw that approval because it prefers total park without violating the statutory mandate under the Old Georgetown Act, without violating its own regulations, and without violating the fundamental notion of administrative due process and fair play.

Our second memorandum, the memorandum prepared by our firm, addresses another aspect of the matter, which should be of serious concern to you. If you withdraw your approval and now recommend against the project, and if the Mayor follows your recommendation and refuses to issue a building permit, the developers will be denied the opportunity to make reasonable, economically realistic use of their property.

The record in this respect, as Mr. Miller outlined,

will demonstrate that the developer made every effort to cooperate with the Mathias task force, this Commission, and others, to design a project that met, to the extent economically feasible to do so, the desires of all interested parties. In that process, significant concessions were made in terms of height and bulk, in terms of dedication of property for park use. As a result, the proposed development is significantly less dense than that approved under Court approved zoning.

The record will also show that use of this valuable property for another boat house or for a restaurant would not be economically feasible; it would not constitute a fair use of this valuable property, in accordance with the law. Furthermore, the record will be clear that the Commission's rejection of the architectural design it previously approved as commendable will be based solely on the Commission's desire to preserve the total area for public parkland.

The Willard Hotel, the Benson case and the Deltona cases discussed in detail in our memorandum make clear inverse condemnation will occur in these circumstances. The owners will be entitled to be paid full fair market value, as if a direct condemnation had been ordered. Indeed, in this situation it is hard to conceive of a more classic case of inverse condemnation where, as here, the clear purpose is to cause private property to be used as a public park.

Now, this consequence of withdrawing your approval

should not be dismissed lightly, on the basis that your recommendation is merely advisory to the Mayor and ultimately it is his decision, or on the basis it ought to go back to the Court again as an adverse recommendation by you. Knowledge that the Mayor has consistently followed your recommendation may be sufficient federal action to make the Federal Government liable for inverse condemnation. I, frankly, don't know the answer to that thought.

Even if that is not the case, however, you should hesitate to set in motion a process whereby, unless the Mayor rejects your recommendation, the District will be saddled with a bill of that magnitude, which it can't pay. After all, an advisory body such as the Commission derives its real authority and persuasive authority, and, therefore, the integrity of its advisory process, from the perceived soundness of its recommendations. If you withdraw approval of the architectural design you praised merely six months ago, after the developer spent millions trying to meet your desires, if you, in effect, recommend the taking of this property, when Congress twice refused to consider bills authorizing such a taking, and the Secretary of Interior and his predecessor both stated there is no fund for this purpose and none will be requested, your position may be well conceived as unsound and unfair, even by many of those who share the desire for a total park.

I respectfully submit there is much more at stake

here than merely do you like the project or don't you, or whether there should be a public park or not. There is really a very real i-sue here of the integrity of the Commission's advisory process.

Now this brings me to Executive Order 11988. Executive Order 11988 does not require that you withdraw your prior approval of this project for the reasons set forth in Mr. Schwartz' memorandum. 11988 we do not believe is applicable because the decision of the Attorney General is premised on a misreading, the Commission's misreading of its regulations, of its statutory powers, which we pointed out were limited to approval of exterior features of buildings, and as the Court has affirmed.

Even if 11988 is applicable, it does not prohibit development in the floodplain. I believe the Commission must realize this or it would not have approved the Reichmeyer project directly across K Street, which our information was this was approved in late December, six weeks after the Department of Justice opinion letter that 11988 was applicable.

In any event, if you carefully read Executive Order 11988, you will see these following requirements: First, if the Agency determines a proposed action will occur in a floodplain -- clearly this has been done -- it shall consider alternatives.

Now, the record very clearly indicates, and there

will be absolutely no doubt that this Commission, and before it, the Mathias task force and the Court, and many others have considered all of the possible alternatives here. There is no doubt that this Commission has provided leadership in advocating the total park approach. The reason that approach has not been accepted is because Congress has twice ignored bills to purchase the property and both the Secretary of Interior and his predecessor flatly rejected the idea.

Clearly Executive Order 11988 does not authorize action which would have the effect of taking private property without a congressional appropriation; thus under Section 2A(2) of the Executive Order 11988 - quote - the only practicable alternative consistent with law is to allow the property to be developed, as proposed, which is well below the zoning approved by the Court. This being so, 11988 imposes the next requirement, that the Agency - quote - design or modify its action in order to minimize potential harm to or within the floodplain. That is Section 2A(2)(i).

This requirement, on its face, is simply not applicable to an agency such as the Commission, whose function is limited to approving the exterior architectural features and which has no capacity or resources to design or redesign a major flood control network. Nevertheless, we have with us this morning, as Mr. Miller pointed out, a leading hydrologist, a leading designer of floodplain structures, and a major in-

surance executive that will demonstrate to you beyond doubt how carefully this project has been planned to avoid any adverse impact to or within the floodplain.

Finally, 11988 requires that the Agency could prepare and circulate an explanation of why the action proposed is located in the floodplain and provide an opportunity for public review. Certainly if there is any project in which the public has not been more notified of why development is proposed in the floodplain, and any project in which citizens have not had a greater opportunity to participate and discuss all aspects of this project, this has got to be the one that has had the most opportunity. So in point of fact, all of the substantive requirements -- go through the Executive Order and pick them off -- all of the substantive requirements have, in fact, been met.

Now, the only thing that remains is the fact that the Commission has not adopted regulations -- apparently has not adopted -- at least we are not aware of them -- regulations that spell out these procedural substantive requirements, but this is hardly a basis for denying approval, complying with the substantive requirements in the Executive Order. After all, substance, not form, is the measure of due process, and here the Executive Order has been fully complied with, in substance, and this project has been studied from one end to the other.

As I said, I wanted to introduce our expert on the

flood issue so that you may ask any questions you want. First we have Dr. Y. M. Sternberg, an outstanding hydrologist who has examined records, flood records, in the Potomac Valley, going back 89 years, and has made key calculations on which our project is based. I think it is important here in your consideration to realize that this study, this detailed study, was presented to the District of Columbia government, which, under statute, D. C. Code 51101, has the responsibility to insure that construction in the floodplain uses construction methods and practices that will minimize flood damage, so they have accepted this study and they have even commended this study, and they have satisfied themselves that the floodplain issue will be satisfied, in accordance with their statutory mandate. So, Dr. Sternberg, do you want to come forward?

DR. STERNBERG: Good morning, Members of the Commission.

My name is Y. M. Sternberg. I am a professor of civil engineering at the University of Maryland.

I have been involved in numerous floodplain studies and I am testifying today as a consultant with Western Development.

The flood analysis that I am going to report on was a joint effort between myself and the firm of Ben Dyer Associates. I have appeared before you and reported on some of these studies, and I have been present at some other meetings,

and I was available for questioning, and I responded to some of your questions. My purpose today is to again give you a brief summary of the work that has been done, and what the results are.

The initial study, which started about a year and a half ago, emphasized only fluvial flooding or river rain. All of the data we have used from the first study and all subsequent studies are data available at the public domain. We did not obtain any data or generate any data on our own. Likewise, all of the computer models, all of the methodology, all the other tools that we have used are tools that were developed either by U.S. Geological Survey or the Corps of Engineers, or recommended methodology by the U.S. Water Resources Council.

The initial study, as I said, looked only at fluvial hydrology. The data was obtained from a gauging station 1.2 miles upstream of Chain Bridge. A statistical analysis was performed, using the technology and methodology recommended by the U.S. Water Resources Council.

The 100 year flood was estimated at 457,000 cfs, which the corresponding elevation is 16.9 feet above mean sea level. The maximal of record is 484,000 cfs; it is a 1936 flood, and it is approximately an event that will occur once every 130 years. We at the initial study did not include any tidal flooding because an analysis of the historical records suggested that fluvial flooding is much more serious and the

magnitude is larger than tidal flooding, and, therefore, we eliminated it from the first study. Also, the maximum tidal flood at Georgetown, from the records, is 9.6 feet above mean sea level, and this is the August, 1933 flood.

We presented the results to the District of Columbia Office of Environmental Services. After they had a chance to review it, their response was that they would like to see an inclusion of the tidal flooding combined with the fluvial flooding, simply to include the tidal and see what effect will the tidal have, just in case we have a fluvial flood combined with tidal flood. This was a reasonable request, and we went back and did a second study, which is this document, which included analysis of the tidal flooding and analysis of fluvial flooding from two separate approaches. One is statistical and one is a simulation study.

The statistical study looked at tide records that are available at Haines Point. The high tides are due to hurricanes that are superimposed on astronomical tides, and these are the extreme tidal events we looked at. We developed frequency curves for these tides and developed frequency curves for fluvial and combined the fluvial tidal events together, and we ended up with a value of 17.2 feet above mean sea level at the Georgetown waterfront.

The analysis of these historical records assume that the two events, the tidal and fluvial floods, are independent.

I believe we are entitled to that assumption, because it is unlikely that one event will cause both a tidal and fluvial flood. In other words, if you have a ^Whurricane like Agnes, for example, that is responsible for two, for the tidal and fluvial flood, the time frame is different. The tidal flood is much shorter. A fluvial flood will arrive here at a much later date, and, therefore, we consider them as independent events.

After that, we were not satisfied yet, so we looked at another approach to evaluate what is combined flood gains, combined from the sense of tidal and the fluvial floods, and HEC-2 -- "HEC" stands for Hydraulic Engineering Center, a part of the Corps of Engineer -- the HEC-2 model, a model they developed, a computer model, we have used this computer model, and the first requirement was to calibrate the model for the Potomac River. This was done using historic events; namely, the October 17, 1942 flood and June 24, 1972 flood, the Agnes flood. There were records available up and down the Potomac, where the high water marks were, and the model was calibrated against these two events. Once the model was calibrated, the model was then used to determine what is the level at the Georgetown waterfront project, and again the 100 year flood event, combined event, in this case, was again 17.2 feet above mean sea level.

This document was then submitted to the District of

Columbia, the Environmental Services Department. It was reviewed, and, to my understanding, it was approved. We have done a number of other incidental computations. What we wanted to do is take a look at what is the effect of this project, what will be the effect of this project on the level of the Potomac River during the 100 year flood. We have assumed at the present time the site is vacant; there is nothing on the site, and then we compared what will happen if there is now the site occupied by the proposed project.

Our calculation indicates that the water level due to or during the 100 year flood will rise by five-eighths of an inch. This is less than .05, and it is, as far as we are concerned, it is an insignificant value.

Again, to summarize, the study is based on data available in the public domain, the analysis was carried out in accordance with accepted practice and the methodology we have used was developed by various government agencies. We did not use any new methodology that is not available in the public domain.

The effect of the development on the level of the river, the development on the edge of the river, is, in our judgment, negligible because the removal of the natural storage that this project will have is also negligible, and I do not believe that it will cause any additional flood hazard on downstream areas.

CHAIRMAN BROWN: Thank you very much.

MR. NETSCH: May I ask were you involved, therefore, in the design of the reduction of the flood area -- I mean the design of the berms and the walls, or were you just involved with the clarification of the degree of intensity of flooding?

DR. STERNBERG: My charge was to develop or to determine what is the 100 year flood. Once we developed this, my colleague, Colonel Letellier, has developed the necessary flood-works for this project.

MR. NETSCH: Thank you. One other question: On that chart you have an orange line, which is the 100 year flood. About what elevation is that?

DR. STERNBERG: 17.2.

MR. NETSCH: And you have a hurricane Agnes at 14?

DR. STERNBERG: Right.

MR. NETSCH: And you have a statement somewhere what is the normal height of the river.

DR. STERNBERG: I don't believe I made a statement as to that.

MR. NETSCH: What is the normal height of the river with regard to that diagram?

DR. STERNBERG: The normal level of the river will depend on what is the flow in the river.

GENERAL LETELLIER: There is a variance.

MR. NETSCH: What is it now?

VOICE: It is plus 2.

MR. NETSCH: Thank you.

CHAIRMAN BROWN: Mr. Miller, could I just say I think when we were asking how long a presentation would be given by the developer we said we could stretch our usual procedure and go to 40 minutes. I later heard we assumed that meant an hour, and we limited you to that. We are now at an hour and 45 minutes, and I think it would be appropriate that we wind this up.

MR. MILLER: Okay. I respect that. This is very important, and I am sorry it has taken so long.

CHAIRMAN BROWN: I realize we have held you up with some questions.

MR. NETSCH: Also, I would state for the record the drawings I had to review did not contain the basin, which just arrived, as you know, several days ago, and was not available.

MR. MILLER: These are some of the other floodplain sites. Floodplain development is not new to Washington.

Before General Letellier starts, we have a list of other projects from the City that are existing or planned in the floodplain. I think General Letellier found out Hirshhorn Museum is also in floodplain, as is a lot of the Tidal Basin area.

CHAIRMAN BROWN: Let's just take a couple minutes here.

(Short recess)

CHAIRMAN BROWN: I will call the meeting to order again, ladies and gentlemen.

GENERAL LETELLIER: Mr. Chairman, I am Major General Carroll Letellier. I spent 20-some years with the Corps of Engineers and retired as a major general. I have been involved in the St. Louis District development of the floodwall protection of St. Louis. Our firm has been involved with the Chesapeake Bay Bridge tunnel. We have also been involved in development of marine type construction, in designing the Fort McHenry Tunnel under the Patapsco River in Baltimore for I-95 North.

I would like to give a brief overview of our involvement with this project. My firm was engaged to provide the flood control structure and foundation and review engineering studies made to date and to assure that all possible impacts have been addressed. I have reviewed, with experts from our firm, the findings of highly qualified groups of engineers, both local and national, on development of this site, and I believe they have addressed all key issues.

I would like to provide an overview of my conclusions, based on my firm's review. One, there is no major upstream or no downstream impact as a result of this project.

Two, it is balanced development and relates to similar other waterfront development.

Three, the project's erosion impact in the area of construction is inconsequential.

Four, the project meets the required federal standards for construction in the floodplain.

Five, construction is designed to be flood-proof, in accordance with existing regulations.

Six, there is little or no impact on the local utilities; where impact exists, solution is well within routine engineering practice.

Seven, there is no flash flood threat on the Potomac, and the flash flood threat in Rock Creek is being amply addressed.

Eight, the safety and health issues have also been amply addressed.

In conclusion, from an engineering standpoint, this is a well-conceived project. There have been no objections from the federal governmental agencies who own the vast majority of the lands that would be affected if there were an adverse impact, and my firm, plus the other engineering firms associated with this project are placing their professional reputations on the engineering viability of this project.

I would like to make one final comment. In looking at the permits, in discussion with the Corps and in relation to my experience in the past, there are two major issues in

permit: Number one is water quality, taking water out of the Potomac, using it in the basin, and putting it back in. My firm can address that problem, and it would have no adverse impact.

The second is the historical nature of the area. Since the Fine Arts Commission has taken a position that the boat basin, the marina, should be in the project, it would enhance our ability to get an early resolution on the permits required for the project.

Thank you very much.

MR. CLARK: Our next speakers are Mr. Thomas McCann and Mr. James Reynolds.

MR. McCANN: Good morning, ladies and gentlemen of the Commission. If I could like I am speaking fast, that is the way it is.

A few years ago, when Western started to get things off the ground, they sought out attorneys and accountants and that also wanted to get the best insurance facility in town. They found my firm, Wolf & Cohen. Wolf & Cohen has been doing business and serving Washington businesses for 103 years; that is, 1878 they founded Wolf & Cohen. Among its clients it has property owners, commercial property owners, the arts, the media -- to name a few, the National Symphony, Boston Opera, the Washington Post -- and the construction trades.

We are in the business to serve all the insurance

needs of anybody in any business in Washington.

A few years ago we had a chance to insure some very valuable instruments owned by the National Symphony, and I will be damned if I didn't have a harder time finding markets to write that type of insurance than I would be in finding markets to write flood insurance.

When this project gets underway and ready for insurance, it is not a question of going out and finding some markets; I am going to put the project out for competitive bidding. The markets are there to write this type of insurance.

In November past, American International Companies said:

Dear Tom,

"Thanks for the opportunity to look at the Georgetown Waterfront Project. I believe AIC is ideally suited to underwrite the unique property exposure presented by a project of this nature during development and for permanent insurance."

Then American Home: "American Home has long specialized in insuring long unusual risks, either building risk or broad all-risk coverage. This specialization has made American No. 1 in the last nine years. Presently we write property insurance for Washington Metropolitan Transit Authority, Baltimore Harbour Tunnel, and a 40 story project on Four Mile Dam in British Columbia. All are written and include flood

and earthquake."

They have attached some promotional material, et cetera. That is American Home.

With me is James Reynolds, Property Insurance Superintendent of Fireman's Fund. They have a local office here. This company is out of Philadelphia. Jim's is one of the markets we represent, and Fireman's Fund is listed in the top ten of the 300 property and casualty companies in the United States. They are rated higher than American International.

I would like to introduce Jim at this time, and he has a few comments to pass on to you.

MR. REYNOLDS: Thank you, and good morning, ladies and gentlemen. I will make this as brief as I can.

We have reviewed several of the plans similar to the ones you have already seen and in reviewing the flood control aspect of it, which was our main concern, we have deduced that the program, from an insurance view, is an insurable entity and insurance can be obtained. We would be instrumental as the Fireman's Fund in providing whatever limit of insurance, and we are talking in terms of about 150 million dollars would be necessary to insure this project.

MR. McCANN: Any questions?

MR. NETSCH: No.

CHAIRMAN BROWN: Thank you.

MR. MILLER: That is basically our internal presen-

tation. There are several people who have written us that would like to speak. Mr. Lawrence Shoemate, Executive Director of the Department of Economic Development, of the Mayor's office, is here today and Mr. Shoemate would like to speak.

MR. SHOEMATE: Good morning. You will have to excuse me as I have a slight cold.

My comments are going to be very brief and direct. What I was asked to do was to come and speak to the economic development benefits, the fiscal impact benefits as relates to the City government. I want to do that. However, I feel compelled to preface this with a comment, and it is because of something that happened to me as I was coming into the room. A gentleman stopped me and asked me who I was, and I introduced myself and he became quite disturbed and said that if I was from the City I had better not say anything in favor of this project.

Now, that concerned me considerably. Prior to coming to testify, I contacted the Mayor's office and indicated I had been requested to come and to speak to the fiscal impact of the project, and I asked if there was an objection to the project. I was told as long as I was speaking professionally and in that vein, certainly there was no objection to that.

I think there is no question the Mayor is very supportive of the community's views, the community's interest in having a park developed on the particular site in question,

and along the Georgetown waterfront, and he is also aware of the funding problem that I heard mentioned or that was mentioned earlier.

The comments I will make will relate to the fiscal impact of the project, and I will try to do them in the context of the City as a whole. The Office of Business and Economic Development is concerned with doing those things and encouraging those things within city government that will result in an increase in our tax base and jobs for the citizens of the District.

As you know, the population of the District of Columbia is 70 percent minority, a great number of whom are black residents of lower-middle and lower income. We have a very serious unemployment problem, particularly in the low income areas, and we have a situation in the District where our tax base has been gradually depleted. Much of that has to do with the amount of land that is under Federal control, the constraints that we have placed upon us to a great extent, which can only be removed as a result of congressional action.

For example, we are competitive in terms of our ability to sell industrial revenue bonds. That can only be accomplished if we get the necessary legislation. We have a Workers Compensation situation which makes the cost of Workers Compensation four times, depending upon the particular business,

four times greater in the District than what it would be in Virginia and Maryland. We have a long list of other things. I look almost on a weekly/monthly basis on situations where lands that we had hoped, from the standpoint of our office, could be developed for economic development purposes is not available because of proposed federal uses, so within that concept and within the context, also, of a series of meetings I have been having and my staff has been having at the community level, where we have a large number of citizens very concerned about the increased tax burden upon them, the development that we have taking place in the town area, it is not offsetting, it is not new development that is a tax advantage to the District. At the same time we are losing our light industrial and service businesses.

The residents living in those communities that happen to be, particularly in the areas around metro stations, and so forth, are being forced out of their homes. We have a large number of residents on fixed incomes who very soon are not going to be able to afford to live there, and there is a great fear on the part of the majority of the citizenry of that situation. It is within that context that I want to verify that this particular project is one that will generate a minimum 8.6 million in annual revenue to the District of Columbia. Currently it generates very little. It is also a project that will generate somewhere in the neighborhood of 1,400 jobs, many of which

we believe can be directed toward citizens of the District of Columbia. We think that is quite significant.

I cannot speak to the design character of the project, nor can I speak to the environmental concerns relating to the project. I think there are more than sufficient experts here to speak to this question, but certainly the economic impact is one that is very positive and it is the kind of development impact that we are hoping to generate throughout the City, whether it be this project or whether it be others.

For example, I heard mention of the Harbour Place development here, and we looked at the history of the Harbour Place development, at which there was a very strong community reaction against that project. The project was delayed in the courts for many, many years, and I am sure that both sides had their points. The end result of the Harbour Place project, based upon analysis of what is happening in downtown Baltimore, is that it has resulted in tremendous economic development benefits to the City of Baltimore and has generated other kinds of activity that is looked upon, I think, by the total citizenry now as very positive.

So those are the statements I want to make. I hope it will be helpful.

MR. NETSCH: I have a question, and one comment. Of course, you are aware Harbour Place development occurred because the citizens and planners kept a bridge out of the area.

You are aware of that? And the highway was moved to allow this development to occur.

MR. SHOEMATE: Yes, there were concessions made.

MR. NETSCH: Secondly, in your role, do you analyze projects individually or do you review them for the apartments and the rents or do you just review the total project?

This is just a question for information.

MR. SHOEMATE: Our concern is commercial and industrial development. We are looking at a number of projects. Many of those projects are projects that are controlled by City agencies -- for example, the Redevelopment Land Authority. We are encouraging the Redevelopment Land Authority to leverage its land in order to maximize development.

MR. NETSCH: You weren't assuming this was available housing for the group you mentioned?

MR. SHOEMATE: No, no; I am speaking to the lost tax base we are experiencing.

I could go into some length on the light industrial and service businesses that we are losing rapidly and the impact that has upon the city revenue. This is an 8.6 million dollar project that will increase it. I am not speaking specifically in favor of the project because, as I said, environmental design and environmental concerns are decisions you have to be concerned with as the experts. I am simply speaking of

the economic benefits.

MR. NETSCH: Thank you.

MR. MILLER: As I mentioned, there are some groups who have expressed interest in speaking. Before that I would like to introduce Mr. Robert Gallas, the president of CSX, ^{Mc GOWAN} one of the partners in this project, and now one of the larger companies in the country.

MR. GALLAS: I would just like to state I am president of CSX Resources. We are the joint venture partner in the project. Also, since the turn of the century we have owned a portion of the land that is involved in this project. I think in the past, and certainly for the future, we would like to be looked at as responsible corporate citizens.

Over the past years we have met with several of the governmental agencies and private groups and tried to make compromises which would give us a project that would be satisfactory all of the way around. Throughout all of this we have to be concerned, as businessmen, as business people, that we have preserved financial viability. Frankly, we look at the all park solution as not a viable alternative.

We are unwilling at this time to proceed with any exploration of an exchange of property. The Georgetown property is unique. It is probably one of the most valuable parcels in the country. We really don't think it would be productive, and that we could find any kind of an exchange arrangement that

would be feasible. By the same token, over the past years we have looked at the funding possibilities for an acquisition of our properties and the adjacent properties and in prior administrations we have concluded that the prospects were about zero. Under the present administration we would say that they are probably a little bit less. We say the only way to get a park is through a development similar to what is being proposed. We look at, really, the alternative to that project as being a continued unsightly and unproductive land on the Georgetown waterfront, and we would certainly urge that you give the project favorable consideration and support.

Thank you.

CHAIRMAN BROWN: Thank you very much.

Does that conclude it?

MR. MILLER: The Chairman of the City Council for the District of Columbia issued a letter to you that Mr. Wilnot would like to read -- a short letter from the Chairman of the City Council.

While we are finding the letter --

CHAIRMAN BROWN: We will keep that part of the record open, if you want to read it later.

MR. MILLER: I would like to introduce the Executive Director of the Business and Professional Association of Georgetown, Ms. Sherrie Sandy, to make a statement.

CHAIRMAN BROWN: Is Miss Sandy here?

MR. MILLER: She probably had to leave.

Well, here is the letter we were looking for.

MR. WILMOT: Good morning, ladies and gentlemen.

This is a letter addressed to Mr. Carter Brown, Chairman of the Fine Arts Commission, from the Chairman of the City Council. He was unable to be here today and he would like to have this presented. Also, our elected representative from the Congress was unable to be present, Congressman Fauntroy, and there is a statement from Congressman Fauntroy in support of this project. Unfortunately, and ironically, he is conducting oversight hearings involving the City's additional \$60 million deficit, so it is only appropriate here this morning to address fiscal problems and possible solutions.

"Dear Mr. Brown,

"It has come to my attention that the Fine Arts Commission, at its meeting on Tuesday, April 7, 1981, plans to reconsider its decision on the Georgetown waterfront as proposed by the Georgetown Harbour Associates.

"As Chairman of the City Council of the District of Columbia, I am greatly concerned about economic development. Approval of this project has the potential to do several things for the District of Columbia; namely, provide 15 acres of public park at no acquisition cost to District taxpayers, provide a well-balanced project that will enhance the District's economy and

employment, and provide an aesthetically pleasing waterfront for the District of Columbia consistent with . . . development. I urge the Fine Arts Commission's reconsideration of the Georgetown waterfront project.

"Thank you for your consideration of this request.

"Sincerely."

I believe this letter was delivered to this Commission this morning.

CHAIRMAN BROWN: Thank you.

MR. MILLER: There is a statement from the members of the Board of Georgetown, the Business and Professional Association. Unfortunately, they were here and they had to leave.

This statement says: As members of the Board of Directors of the Business and Professional Association of Georgetown we feel it important to inform your honorable Commission of our strong support for the Georgetown waterfront project. We, our clients and customers, have had to cope with the disaster area on our front doorstep far too long. Year after year someone holds out the false hope that somewhere, somehow millions of dollars of federal funds will be made available to turn this blighted wasteland into a lovely park.

As reasonably mature and reasonably well-informed people, we are not going to fall for these false hopes any

longer. You have before you a project which, in addition to economic, commercial and aesthetic benefits it clearly has, will finally provide our neighborhood with an attractive, useable waterfront park.

We have carefully studied all ramifications of this project and watched it over the last years. We feel sure it will provide Georgetown the amenities it certainly needs. We recommend you approve the project without further delays, and this is signed by members of the Board.

There is a second separate statement from several other members of the Board, plus support from several other merchants in Georgetown -- Miss Iris Garnett, plus others. There is a letter from Mr. Robert Ayres, a long-time member of the Commission, and Mr. Edward Garfinckel, who was a merchant in Georgetown. I would submit these for the record.

CHAIRMAN BROWN: Thank you very much.

MR. MILLER: I believe Mr. Carlton Jones, President of the D. C. Chamber of Commerce is here. I know your time is limited, but I believe that is the last semi-official speaker.

MR. JONES: Members of the Fine Arts Commission, my name is Carlton Jones, President of the D. C. Chamber of Commerce, also president of Jones Wells & Associates, a real estate broker. Our firm is not involved in this project in any way.

I have reviewed the architectural plans and I per-

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I have reviewed the architectural plans and I per-

sonally feel both the plans and the concept is a superb design. The development will give the City a park they cannot afford to acquire or develop. The development will create new tourist attractions, provide jobs and tax revenue for the District. The construction for residential, retail, and office use will increase the City's tax base.

In light of the positives this development will bring to the City and the new businesses, jobs, the tax revenue, I would recommend that this development be approved.

Thank you.

CHAIRMAN BROWN: Thank you very much.

MR. MILLER: There happens to be a few citizens, both pro and con, that would like to speak, if you would like to have them speak.

MR. NETSCH: Could I ask, Mr. Moore -- I know that our responsibility in reviewing drawings does not include interior planning and such, but I have just two questions. In reviewing the drawings, I was curious about, especially the residential levels, the distance from the elevator to the apartments, which seems quite a long ways -- over 200 feet in several instances -- and it seemed to me for the rentals that were discussed earlier that some sort of accommodation might be made. You may find you might want to review some of that proximity.

Also, I was going to ask you how do you conceive

people viewing the Potomac from the apartments, except those that absolutely face the river.

MR. MOORE: Well, speaking to the first question, we might find as a market strategy we would have to put in some satellite elevator locations, and that we would be doing that as a miscellaneous permit application, as we do in fine-tuning a lot of projects.

CHAIRMAN BROWN: Would this affect the roof line?

MR. MOORE: No, it would not.

CHAIRMAN BROWN: There wouldn't be any longer runs there?

MR. MOORE: Most of the longer runs would take place on the lower level floors, where you might have to use some hydraulics.

The second point is, I think, most of them do have views and we intend to have quite a few bays and projections, so where we don't have a direct view out we have at least an angle to it.

MR. NETSCH: I had sort of assumed I would see more angled viewing, especially in those light wells--you know, where your easements are, your 30 foot, because you have bedrooms opposite living rooms, 30 feet apart, which is about two-thirds the length of this room, and for an expensive apartment, that is not the choicest view.

MR. MOORE: Well, we are trying. That is all I can

say.

MR. NETSCH: Well, you see, it affects the visual design of the facade of the building if your intent is or you want to give some privacy for the 30 feet -- I am not trying to design your structure, sir; I am trying to find out if the design is going to change -- that is my question -- if you want to angle the view, and then, in a sense, the design of the elevation that I have been reviewing will, in a sense, change. Do you understand that?

MR. MOORE: I do understand that. I think if you look at other projects -- there are many projects where space is tight and we have done similar projects that I would like to take you to. There is one on 29th Street, where we have a tight situation, and we produced a bay which, essentially, turns your view in an angled condition, and we have introduced that a lot in the projects.

MR. NETSCH: Well, the bays occur often on the exterior, not so much on the interior slot per living room unit. They tend to be horizontal windows the width of the room.

I am talking about the plans, not the models.

MR. MOORE: Well, there are quite a few bays. I think that if we felt we were required to put in more bays we would come back to this Commission and ask your opinion on it.

MR. NETSCH: I am just trying to understand the

status.

Thank you.

MR. MILLER: There are a few citizens, pro and con, that would like to speak.

CHAIRMAN BROWN: In the case of citizen participation, which has been given quite a bit of opportunity on this project, I think, over four meetings, I think in the interest of time and expediency we should try to limit points made by speakers to new material that represents a point not made by anyone else, and certainly no longer than three minutes each, so if there are any speakers, while the developer is proposing, anybody that would like to speak in support of this -- any speakers from the community that would like to speak in favor of this project?

MS. BAGLEY: My name is Victoria Bagley, and I am a businesswoman and I live in Georgetown, and I have a family. I would like to speak about the use of the park, if it were to go all park. We have a lot of parks in Georgetown. My children use all of these parks. The only thing that would make this park different from the other parks in Georgetown is that most mothers wouldn't be scared when the sun goes down and the children are still there where there are lots of people. All of the other parks close, and it is very dangerous if the children stay on. I think you can check with the Georgetown crime rate, and you will find that there is a lot of

danger for children to be in the parks late at night. This way the children can be out on a warm summer night after dinner, go to the park and play football, baseball, whatever they want.

CHAIRMAN BROWN: "This way" meaning which way?

MS. BAGLEY: If it is mixed use. I don't think that the alternative -- I mean there are loads of parks in Washington and you never see anybody in them at night. I jog and I make sure I jog after the sun comes up or before it goes down. It is not safe, and I don't think that what you are presenting is an alternative plan to what we already have.

CHAIRMAN BROWN: Thank you very much.

Anyone else?

MS. MACK: My name is ^PCamela Mack, and I live at Foggy Bottom. My friends and I have been looking forward for some time to the development of this project because it would certainly be an improvement. I was terribly disappointed about a month ago to hear of your most recent decision. I can only say I support this project very much and I hope that you will reconsider and support it yourself.

CHAIRMAN BROWN: Thank you very much.

Anybody else?

All right, let's move on then to hear anyone who would like to speak on the other side, again with the idea that the reiteration of material that is already part of the record



on this is to be discouraged, and the intervention should be kept short.

MS. SULLIVAN: I am Catherine Sullivan, Chairman of the Advisory Neighborhood Commission of Georgetown. I am going to make a brief comment now, because the presentation became rather lengthy, and there are several of our expert witnesses that would like to speak before they have to leave.

I would like to say as a group we are reaffirming everything in the record last month, and we support a full park on this magnificent site.

I would like to introduce Mr. David Bonderman, an attorney for our Commission.

MR. BONDERMAN: I am David Bonderman, from the law firm of Arnold & Porter, and I am here to represent the committee today.

Mr. Miller did not give my client or me the benefit of the materials or legal opinions he submitted, I understand, yesterday to the Commission.

CHAIRMAN BROWN: They came in after the close of business last night.

MR. BONDERMAN: I assume, Herb, you will make a copy available.

MR. MILLER: Whatever you like.

CHAIRMAN BROWN: They are part of the public record.

MR. BONDERMAN: My remarks are based upon Mr. Clark's

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statements and what I perceive to be his opinions, based on his statement here. As I say, I haven't had the opportunity to read them, so my views may be stronger, but, frankly, I wouldn't want to be in a position of giving legal advice that Mr. Clark has purportedly given. As I understand what he said to the Commission this morning, his client contends this Commission is under some sort of legal obligation to approve the permit because they contend that at sometime in the past the Commission has said things which might have led them to believe ultimately they would get a permit, or something like a permit, and I want to assure you in most unequivocal terms this Commission is under no such obligation. There is no such obligation in law. Obviously, if there were, you wouldn't need a final permit, but just preliminary approval.

I would like to state how wrong Mr. Clark's opinion is by telling you about another case, an extreme case of a commission being involved, which happened to be in the City Council, the Planning Commission of San Francisco, where the Commission was upheld. That particular developer wanted to build a high-rise on Russian Hill and he applied and got a permit and started his construction, and the City changed its mind and down-zoned it to three stories, and the Court said, sorry, Mr. Developer, they can change their mind; you haven't expended sufficient funds yet, even though they spent some three million dollars, and they have a right to change their

mind. That is the risk you take. That is the Hoss case, and it is a well-known federal precedent.

There are many other cases like that. This Commission is not under obligation to approve it because this Commission merely advises on what the texture of bricks will be and what the facade will be.

Mr. Clark also issued an opinion that this Commission has a right to recommend against construction, and, of course, the Commission does. In addition, the Commission has powers under the D.C. laws, D.C. law 2114, to recommend against construction or limit it below the zoning, so this Commission is under no obligation to do this. Of course, if it is the Commission's view the project should proceed, the Commission is entitled to do so, but it isn't stopped from doing so, any more than you are in a position where you can't change your mind. If you decide you made a mistake in respect to it the last time and you change your mind, of course, that is your right, and if you decide the project shouldn't go forward, you are entitled to make that decision.

Mr. Clark tells us there are grave risks if you recommend against the permit and the Mayor ultimately turns it down, then you will have required the federal government or the City has automatically bought the property, and, of course, there is no \$90 million that is laying around. But, of course, that is based on the full FAR, and we know the full FAR is not

utilized here, and they have no right to utilize it, they have no entitlement to the full FAR, and they can't value the property on that basis. But the bottom line is there is no precedent in the U.S., none whatsoever, that suggests whatever you do would amount to a taking, or even if it did, you would have bought the property or the federal government would have bought the property.

Mr. Clark cites an old Florida Supreme Court case relying on the Florida constitution. Of course there is a U.S. Supreme Court case on this point a few weeks ago which makes it clear there is no such liability. The majority view is if a regulation is struck down because it is too burdensome, then it is struck down and they are allowed to proceed in some fashion. In the minority view, four justices thought there might have to be some interim compensation, but the courts are unanimous, there is no such thing as involuntary purchase, it doesn't happen and won't happen here.

Let me read you from the Court's opinion, what five justices had to say. They said, a taking occurs - quote - where the effect completely deprives the owner of all of its interest in the property.

Nobody is proposing that. Of course, everybody would like to see a park here, if it can be done, but if it can't be done, as I understand the Commission's previous letter and its current ruling, which is being considered today, what

the Commission is saying is we don't like this project, you haven't assured us there will be a park on the rest of the land, you haven't shown us you can get a permit for the boat basin, which is an integral part of it; come back if you can, so there is no complete denial of anything.

Indeed, one of the interesting things I find is that the Army Corps of Engineers says these folks haven't applied for a permit, not that they haven't gotten one yet, but they haven't applied.

Mr. Miller managed to show up with everybody that thinks their economic interest might be advanced, but they haven't applied for a permit from the Corps of Engineers. I understand that the Corps of Engineers hasn't given a permit like this for 15 years. Maybe the General can speak to that. That is a process that will take three months to a year.

I submit to you if you approve this now, what will happen is a year from now, with foundations poured and construction underway, Mr. Miller will be back to say the Army Corps of Engineers hasn't given me a permit, but I have already spent umteen million dollars on this project, so I think you are well within your rights to say show you have a permit and show us you will have this boat basin and show us you have a park.

One final comment with respect to the park. Mr. Miller quite literally uses the 82 percent park figure, and

when I am doing these kind of things, I would like to make a park out of other people's property, too. The point is two-thirds of that land is owned by the District now. Mr. Miller isn't doing anything to make that a park. Whatever the District's rights are to it, they have these rights without that project. Yes, Mr. Miller is contributing a portion of this, because that requirement has been put in place, but it isn't an 82 percent park situation; it is about a 40 percent park situation, if you look at the privately owned land. The rest of the land is owned by the public at the moment. He has no rights to it whatsoever. So it is all very generous to use that 82 percent figure, but it isn't right.

Finally, with respect to the Executive Order, the floodplain order, Mr. Clark thinks the Justice Department is wrong. I think they are right, but I submit that the Commission doesn't need to rely on counsel for either side. They have their lawyers, the Justice Department, who have suggested what the result ought to be, and even under Mr. Clark's interpretation, all you have to do is look at practicable alternatives--are there any other practicable alternatives for this site besides this building. The answer is of course there are. Why not turn it into a park and it could be open space. That is one of the things the Commission could do, and it could consider this kind of planning. The California open space laws were upheld by the Supreme Court only last year.

I am sorry to take so much time, but in view of the fact we hadn't heard Mr. Clark's presentation before and in view of the fact we hadn't dealt with these points, I thought I would like to bring some of these matters to the Commission's attention, and, of course, when we do get that memorandum from Mr. Clark and Mr. Miller, we will, of course, be happy to submit a rebuttal for the record, if the record is still open at that time.

CHAIRMAN BROWN: Very well, we will keep the record open.

MR. BONDERMAN: Thank you very much.

CHAIRMAN BROWN: Thank you.

MS. SULLIVAN: I think I better address first the issue of our local support, which is so widespread, and I will begin with the Mayor. Two days after the meeting here March 10, last month, there was a town meeting of Ward 3 in which the Mayor was present and he was the principal speaker, and he was talking about development in Ward 3, and he said, of course there is a Georgetown waterfront, and I want to make it perfectly clear as to the City's position on that issue: we favor a total park.

Earlier than that, in answer to Mr. Shoemate's comments about economic return,^{at} another meeting in Ward 3 Mayor Barry said that in the interest of what the citizens of the City want, which is a full park, that he is willing to

give up any tax base resulting from this project.

Actually, I think if you look around the City you see all of the construction cranes throughout the downtown area and remember Georgetown is not downtown, but you look at all the construction cranes and wonder what good is this income from construction doing for the City's budget. One more project is not going to make any difference. We are in very bad financial shape and the massive development going on now has not changed that.

I think I will address the letter of Council Chairman Arrington Dixon. As you know, we have a bill before the City Council on the floodplain, and I need only say that nine of the Council members have sponsored this bill. That leaves four that did not, one of them being Mr. Dixon. We have cities where we have had this before.

The Federation of Civil Associations, the D. C. City Planning Coalition, Wisconsin Avenue Corridor Committee, Committee of One Hundred, innumerable advisory neighborhood commissions and citizen groups throughout the City, they all support the all park.

We have here, and I will show you this briefly, petitions that were signed over the last year or two, since this issue became so critical. There are the citizens from around the City who have signed in favor of the park, which says, "We, the undersigned, support a total park for all of

the land south of K Street on the Georgetown waterfront."

Mr. Miller also mentioned support of the Georgetown businessmen. We had a rally on the riverfront, at Thompson's Boat Center, last October. The citizens of Georgetown were very good to us, so at the rally we had this scroll hanging from the ceiling because it is a very long one. These are citizens and others who have helped to make it possible, and it goes on and on and on. If you would like to review it carefully, you may do so. In other words, we have the support of the businesses of Georgetown.

There may be one or two on the board of the businessmen that may have self-interest. As a matter of fact, I notice there is a letter from Garfinkel's, and they are taking some of the space that Mr. Miller developed on M Street.

One other brief word about other support we have. I believe you saw a letter from the Secretary of Interior, but I think what the Secretary said in having always favored a park was somewhat overlooked. It was flashed on the screen rather quickly. That was the letter of November 24, where the Secretary said "we have always favored an all-park proposal."

We also had the support of the Assistant Secretary of Interior for Fish and Wildlife and Parks, and we had the support of the Director of the Park Service.

I think briefly, and then I will ask others to speak, I will go into the support of the National Planning

Commission, which is very important, an agency which controls zoning for the City. I believe you heard there were hearings before the Zoning Commission in early '70. At that hearing Mr. George Oberlander spoke for the National Capital Planning Commission regarding the floodplain and he said that an obvious deficiency of the proposed project is the lack of concern for construction in the floodplain adjacent to the river. This includes all of the land south of K Street and Georgetown Waterfront. For obvious reasons no habitable area should be permitted to be constructed in this floodplain.

December, '77 your Chairman and the Chairman of the National Capital Planning Commission both wrote letters to the Secretary of Interior in which they asked that -- well, in any case both Mr. Brown and the Chairman of the Planning Commission support a full park use for this land. Then in August, 1980, Mr. Oberlander again wrote to our Advisory Neighborhood Commission with respect to your letters, the Georgetown Waterfront referenced letters, and he says, "Let ^{child's} me indicate to you David Charles, the Chairman, has always preferred to have no private development take place" and so on and prefers all park along the waterfront.

The last part is their comprehensive plan they are working on, a comprehensive plan for the capital, and the Federal Environmental Agency voted and approved page 9 under the floodplains act, and this is the policy of the National

Capital Planning Commission, to avoid new construction in the floodplain wherever there is a practicable alternative. So they have adopted the policy in Executive Order 11988.

There are several points we want to clarify. Perhaps we will have time. There are many misrepresentations that we should address, if you would so desire. We also are prepared to answer any questions you may have. I would go back to the others that wish to speak.

Is Mr. Shannon still here?

MR. SHANNON: Yes.

MS. SULLIVAN: Could you wait just a minute. Mrs. Bonderman would like to speak first.

MRS. BONDERMAN: I would like to address one or two issues that came up this morning. At the meeting last month I was concerned about the Corps of Engineers permit and we have learned no permit has yet been applied for. The developer, or perhaps his architect -- I can't recall which -- this morning said we will get that; it is simply like a permit for a restaurant, and I submit it is not at all like a permit for a restaurant because the boat basin is an integral part of the design, and what we are here talking about today is the design and not whether or not there will be a restaurant in the building, so I think it is appropriate for the Commission to inquire into that.

The second point is on the floodplain sites, which

are listed here. The developer lists many properties north of K Street in Georgetown as sites where you have approved development on a floodplain. This is deceiving. These sites are not within the 100 year or base flood, as it is called by the Federal Insurance Administration. This area is not within the official 100 year flood map of the Federal Insurance Administration, which is the only official flood map that is in existence today. I don't have the map with me, so I can't point to the exact location of these others, but since I know these are not within the flood zone, I might question a few of these others, as well.

Many of these projects are also, you will note, not residence projects; they are restaurant projects, parks, marinas, Kennedy Center, although there are some residential projects here. I think our main concern in the flooding area, and one of the major concerns of the Federal government, is that people do not live within a flood hazard area.

With regard to safety of the inhabitants of the flood hazard area, the developer has produced experts who say there will be no problem getting insurance. I might mention that the American International group, which is one of the insurers that was mentioned this morning, is the largest or one of the largest marine insurers, so there is no doubt they are interested in this project.

What the developer did not talk about in the flood



question is that if the area floods, these gates will be closed, and we talked about that at previous meetings -- I don't want to go into it at length -- but the area will become an island, there will be flood waters all along and there will be no access to inhabitants of this island.

Officials at the Flood Insurance Administration, in talking about this, said that this is the kind of development which would have to be evacuated in the event of a serious flood, and I asked the City representative at one of those meetings what the evacuation procedures were for such an event, and they are not very clear. It depends on whether the water is rushing upstream or downstream, who has jurisdiction to call for the evacuation, and I submit there are many safety factors which have not been adequately discussed. I am not certain it is appropriate to discuss them before this Commission, but I thought I would simply state that for the record.

CHAIRMAN BROWN: Thank you.

MS. SULLIVAN: Mr. Donald Shannon, president of the Association, will speak briefly about the concerns.

MR. SHANNON: I will be very brief. We feel the decision the Fine Arts Commission made at the last meeting was exactly the right one. I think that is what your Commission is to determine, what is the best use for the site. I don't think it is to hear legal arguments and a lot of other ex-

traneous material which seems to have been brought in here today. I am sure Congress didn't intend for you to have to defend yourself against a whole array of other arguments.

You have one mission. I think you have done it admirably. It was applauded by the public of this City and certainly I think your constituents around the country would see that you had done the right thing in the first instance, and I don't see the need for this great lengthy review.

Thank you very much.

I think the letter has come in from Senator Hatfield's office.

MS. SULLIVAN: I believe so.

MR. SHANNON: You have that letter. I think that is the only argument that might be relevant to this thing: is there some way to finance this, and I think that it has to be done by legislation, and I think probably it also will have to be done by some citizen participation. People want something here and they are going to have to do something about it. I am sure eventually that is where we will have to arrive at. I think there should be a quite easily determinable value for it, and we have heard some very fantastic figures here this morning, and I think if you divide them all by half and then cut them down a little more, you might be getting into reality. This will be something we will have to go after, but I think if Senator Hatfield is sincere in his stated

intentions which have been given to us many times, I think we will get their^{re}. I thank you very much.

MS. SULLIVAN: I should say that there was some misrepresentation in the presentation of the developers as to what the citizens of Georgetown thought of this for these many years, so I did find a resolution that the Association passed in 1975 recommending that all of the land south of K Street, between Rock Creek and Key Bridge, be reserved as part of the national park system, and this was presented to the National Parks. The citizens have always supported a full park there.

Now I would like to present Mr. Sydney Hough^{Howe}, Executive Director of the National Committee on Urban Recreation, who will discuss our national support.

MR. HOUGH: I am Syd Hough; I am Executive Director of the Human Environmental Center, and we perform staff work for the National Committee for Urban Recreation, which is made up of leading figures in environmental, socio-economic, urban affairs. We are an effort to pull together common interests of many walks of American life in decent urban parks and recreation, particularly for those most in need of them.

This Committee enlisted joinings in a common statement to advocate a park, an all-park for the Georgetown waterfront, and that statement was joined in by 28 primarily national organizations. I have copies of it for you.

We are grateful for the ruling you made in your last

session. We emphasize the city-wide support that has been documented this morning. We emphasize the national support of the many organizations listed here, such as the National Urban Coalition, the National Council of LaRaza, the National Wildlife Federation, the National Audubon Society, and one can go on reading that list. We believe there is an immense need for more waterfront, water oriented recreation for people of the District of Columbia that can be provided with real park use of this land.

We are concerned, as I think you logically and perhaps legally were concerned with the floodplain dangers and I might note that in terms of recreation potential there was a given width of riverfront land shown in the maps attending the 1979 agreement, land that would be given to the National Park Service for public enjoyment. The width of that strip has been reduced drastically in the plans now before you, or which I last saw a few months ago, and I assume now before you, to the extent that a fisherman standing on the banks would probably catch a pedestrian on his bait catch. There isn't enough room for public enjoyment in the concept before you, and really not in any concept that has been before you heretofore.

We have this all park opportunity now to meet some of the recreation needs of the nation today. It has been enunciated time after time in urban planning and land use circles

that urban waterfronts should have commercial development for kinds of commerce that must be on waterfronts. Otherwise they should be for people. There is plenty of opportunity in this area to provide offices and living places for the people who would occupy the proposed development without obstructing our waterfront. This is energy efficient recreation in a time in which the nation is seeking energy solutions, and one of them is to find more recreation opportunity near home.

I would note that the nationally respected and highly competent Trust for Public Lands is entering into this matter with its expertise in land and real estate negotiations to save open space, and its personnel will be dealing with this matter in the near future. We don't know their schedule, but they are committed to take up this matter.

There is another interesting question arising around the possibility of creating the Franklin Delano Roosevelt Memorial, which this City has long needed on the land in question. We believe that possibility could be an exhilarating addition to the theme for all park.

Finally, I would like to underline and endorse some passages in the letter which Senator Hatfield has delivered to you today. If I may quote briefly, he writes, "It is not my intention to request that the members of the Commission bear the burden of completing the park system along the Potomac

River. That is the responsibility of the Congress and the executive branch. The purpose in my writing to you today is to assure you that the means of accomplishing that goal exist within the Congress and the present administration. At the same time that you are deliberating on this matter at your meeting today, I will be introducing legislation in the United States Senate directing the Secretary of Interior to use every measure at his disposal to achieve the transformation of the Georgetown waterfront from its present blighted state as a depository for unwanted automobiles and an inappropriate industry into a park that is for the use of all of the people.

"You will hear statements that suggest that such an action would require awesome amounts of taxpayers' funds. As Chairman of the Senate Appropriations Committee, I can assure the Commission of Fine Arts that I would not propose nor would the Secretary of Interior in this administration support such an expenditure. The bill I am introducing today authorizes the Secretary to transfer or exchange with the owners of the six privately owned acres on the waterfront federal land of equal value. This is a means of acquisition that has been undertaken successfully by the Interior Department in the past."

The Senator finishes his letter, "Those who wish truly to protect for all of the people this last area of unused land along the Potomac have only one option. I intend to

do everything within my power to assure that the Georgetown waterfront is preserved as a park available to everyone. I encourage the members of the Fine Arts Commission to maintain their support for this goal, and thus hasten the day when it is achieved."

The many organizations I am speaking for urge likewise. Thank you.

CHAIRMAN BROWN: Thank you very much.

MS. SULLIVAN: I will introduce to you Miss Ann

^{Satterthwaite}
~~Sanders-Creighton~~, an environmental planner.

^{Satterthwaite}
MS. CREIGHTON: Mr. Chairman, members of the Commission, I am very pleased to speak to you. I am vice president of the Neighborhood Citizens Association, and I am also someone who has been involved in recreation for about 20 years.

There are just a couple comments I want to make on the recreation park aspect of this proposal which I think are germane to our discussion today. As it has been stated before, this land is of critical value for recreation in this City and in this nation, and within the City it is the only wide piece of land accessible to Rock Creek and the inner city and yet in the proposal in front of us, which is a development between 30th Street and 31st Street, there is not one inch of land that is publicly designated as recreation land, and I emphasize this because I think it is exceedingly important,

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nor has any of this land been even negotiated for permanent recreation use, as would be the case if easements were donated by the National Park Service.

What we are talking about is, basically, about an acre and a quarter parkland in this project, about half an acre along the waterfront and about three-quarters of an acre which is within the boat basin itself. Along the waterfront, which is the most critical piece of land, we have a very narrow strip. It is about 35 feet in some areas, of which about 15 feet is a walkway. The rest of that there has to be a berm, some of which is about at a 25 degree angle.

Adjacent to that berm you have a high building, which further reduces the sense of openness in that narrow strip of land around the river. The boat basin, which was discussed earlier, is a key visual focus, and there is no application for any permit for that, and you wonder whether that is intended either.

I want to go back to the Memorandum of Agreement because I think the spirit of the memorandum of agreement has been referred to consistently, and this project has been seen as consistent with the spirit of that memorandum of agreement. The memorandum of agreement is seen by all of the parties involved, except for the developer, as a dead issue. It has been abrogated. Signatories to that memorandum of agreement sought a compromise between development and park. They sought

160 feet along the Potomac River and that 160 feet was land which was to be an easement, which was to be donated by the National Park Service, and that was to be permanent recreation, and along Rock Creek Park, which was not discussed here because that is not part of the project we have in front of us, Rock Creek was to have an easement which was to be donated to the National Park Service, and we must bear in mind that the buildings behind were only to be 30 to 40 to 60 feet high.

I think we must bear in mind this proposed strip, with high buildings behind it, which I will grant some of it is open space -- this 82 percent is obviously not within this project, but within this project there is open space. Those are streets, not dedicated to open space. Those streets are kept open as streets. Some fire engines have to go down there. And that dedication has not been changed, and I think we must bear in mind that we have actually a very limited amount of recreation land in this project in front of us today between 30th and 31st Streets.

Thank you.

CHAIRMAN BROWN: Thank you very much.

MS. SULLIVAN: I wonder if it is of any interest to focus on the fact that the developer has not come in lately with any plans for the land that is titled to the Chessie System, or, rather, the real estate development company of Baltimore and the B&O Railroad, which is the land adjacent to Rock Creek.

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There is construction planned there, but there is also a 20 foot high easement that exists on that land which is held by the Department of Interior and would have to be removed by the Department of Interior.

If the Department of Interior contemplated that action, it would immediately require an environmental impact statement because that actually would be a significant federal action. We feel the developer obviously does not want an environmental impact statement at this time, which would be a further delay and might prohibit the construction altogether, but would rather face^e that later when the major part of this development is already well underway.

I do have an interesting map, when you have time to look at it, but perhaps we are running out of time. We have a lot of things we would like to rebut, but perhaps it is not necessary unless some of you have a question you would like to ask any of us.

CHAIRMAN BROWN: If there are any points you would like to submit for the record, I think we can agree to keep it open for that purpose.

MS. SULLIVAN: It is small things like the editorials in the Washington Star. If you do have a minute, I could show you this old map from the Archives, which is rather interesting. There is one version which is done in colored pencil. There you see the Rock Creek basin. Rock Creek runs down here,



and this is K Street, formerly Water Street; this is Washington Street, or was, and now it is 30th Street, which is more or less the boundary of the B&O land. Rock Creek originally, in the mid 1700s, came directly out into the river with a wide mouth, and that is the construction of the Canal, which is up here somewhere. This area was dammed, as you see, to develop a basin for turn-around for the barges coming down the Canal, and then you can go back to somewhere in the latter part of the last century when the basin was filled in. Water was directed back in here.

You have heard some reference to the mole here this morning. This area is, essentially, the mole. The mole is federal property. A mole is a promontory of land out into a body of water.

The southern part of this is Thompson's Boat Center. Up here is a permanent easement for railroad tracks. However, that is really federal land. I just wanted to point that out. Of course, this is where the 20 foot high easement exists, which was part of the basin. That is just a little bit of history for you.

CHAIRMAN BROWN: We would like to get to the point where the Commission and members themselves can deliberate about this.

MR. MILLER: Could we have just one minute?

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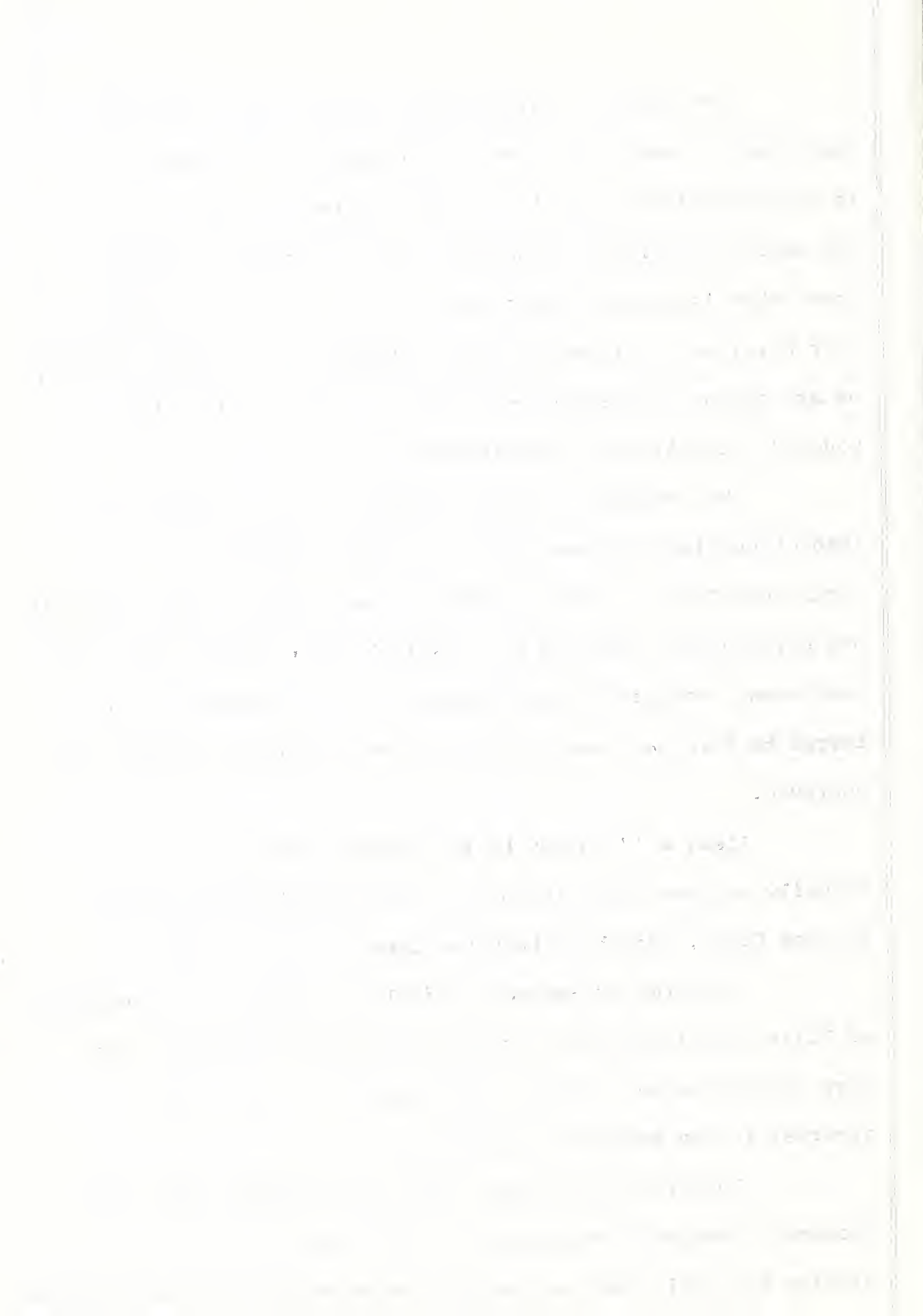
MR. MOORE: I just want a half minute. About the boat basin, I want to be very clear that the boat basin, what is in the final drawings is the boat basin, and that is what you would be approving, and the thing that makes it certain about that is we are coming back to you for these properties over here, so we, in effect, are a hostage and we will do what we are saying. We are going to do it and we will be back to you and you will have something to hold on to.

MR. MILLER: A quick comment: I don't want to get into discussions between lawyers because sometimes it is not worth the effort. I would just like to point out this property has already been vested and it can't be down zoned, as in other instances, such as in San Francisco. The floodplain map referred to here has been approved by the District, studied and approved.

Also, a '78 study by the National Park Service actually extends this floodplain even significantly up here in Rock Creek, and this study has been available since then.

In terms of Senator Hatfield's continued reintroducing of bills, the latest bill, which allows for a transfer, you have letters in your packet that indicate the owner has no interest in any transfer of the land.

In terms of the park width, the average width from Wisconsin Avenue to Rock Creek is 1,288 feet in the plans, including the basin, and in the task force study that same distance



was 1,180 feet.

We have responded to your questions and we have tried to answer them. One of the things that is frustrating to us is the citizens that were involved in this task force, we believe they got what they wanted and now they don't want it, and we think this is the only park solution, the only real one and only practical one, and one good for everyone, and we are asking you to be responsive and responsible in your deliberations to approve this, the only real park solution.

Thank you very much. .

MS. SULLIVAN: I wonder if it is necessary to comment on what he said about the citizens who were part of the task force approving this and now not wanting it. That is not totally accurate. Most of the citizens that attended the few meetings we were invited to were opposed to many of the construction plans. There were one or two, possibly three citizens who felt that it was a minimum of development, which it was a much lesser development than it is now.

We who opposed any development were disinvited to any meetings of the task force from July, '78, when the developer had worked out all of his plans, and, of course, the project had grown and grown at that time. Many of those who felt they could go along with it initially withdrew their support.

Thank you.

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CHAIRMAN BROWN: Now I want to thank everyone for all of their presentations, which have been extremely interesting, and I know how much effort has gone into some of them.

I think it is time for the members of the Commission, perhaps, to review their reactions to some of this. I might lead off by saying some words about the action as taken last time.

The essential issue, as I see it here, is one of the time frame in which one is looking for the maximum good for the capital. Naturally the aspect of local citizen interest is important to us as a federal agency, but, as was brought out in the resolution of a month ago, our primary concern has to be for the aspect that the capital presents to the world as the front door of the capital of the United States and as our federal city, and, as such, we feel that the legislation that set us up 71 years ago had in mind our safeguarding the aesthetic amenities of this capital into perpetuity. If one looks back over the records historically, Rome was not built in a day, and certainly Washington hasn't been. There has been enormous patience and forbearance on the part of the citizens of this country as our capital has developed. When one sees those photographs, you will see the dome of the capitol which remained unfinished, with cranes hanging over it, at a crucial time, and anyone who studies our most crucial single monument, the Washington Monument, one

recognizes how long that important structure remained simply a stump while efforts were made to complete it.

The national mall is a good case in point. It was a very run-down area until the beginning of this century, when the federal government physically had to roll up the railroad tracks sort of defacing the area at the foot of Capitol Hill. The "tempors" that were built for the 1914-18 war as the temporary expedient for the remainder of the war remained there until a few years ago, and there has been a great flurry of construction on the Mall in the last few years, to the extent that perhaps the moment has come for a breather in that and for another generation to have a chance to complete the vision.

If we had been presented with plans to construct some kind of motel or development on the reflecting pool in front of the Lincoln Memorial, naturally we would not have favored this. We might have tried to guide that design to make sure that if, through forces beyond our control, it were ever built it would be a minimum eyesore and impact, but essentially I think we would have said that we felt nothing should be built there, and this, in our meeting last month, was the majority opinion of this Commission in terms of the Georgetown waterfront, with the possible exception of commercial development that has specifically to do with the recreational function, as was stated in the letter that I read at the beginning.

There are uses for this park area as park that could still bring life and activity and people. The Roosevelt memorial is one option. We are running out of space for important presidential memorials in this City, and yet we have a long future ahead of us. One could think of a scenario where 50 years from now the federal government, in its wisdom, would like to construct an appropriate memorial to the administration of President Reagan, and this might be an excellent site for such an undertaking.

The different action, therefore, that we take with the short-term business and aesthetic interest of removing the existing blight, which we certainly feel very strongly about, and the maximization of profit for the people who have taken the risk of investing in this property, has to be weighed against the long-term benefit of this nation and what the ultimate land use should be.

Unfortunately, we are ^{at a} out of watershed decision point, because the decision, in practical reality, is irreversible, that once new construction is allowed, the probabilities, in my judgment, are infinitesimal that one can ever go back and put park on that site. This is why we have taken that matter as seriously as we have. We have bent over backwards to listen to very long testimony over several meetings, we have reopened the record for another meeting today to hear

everyone out, so that no one could say that we have acted capriciously or unfairly.

As a matter of fact, I think in terms of fairness that we have lent a sympathetic ear to development in this City, in general, and to Georgetown, in particular. One of the things that may be held against this Commission by history is that it was the Fine Arts Commission that allowed too much commercial development in the historic district which it is charged to protect. The jury is still out on that, because a lot of this has been set in motion and hasn't been completed. I don't think we will know for several years what will happen to Georgetown in terms of its quality of life and, therefore, perhaps in terms of its economic viability as a result of the impact of the enormous amount of development that has already been authorized or recommended to the District by this Commission. Therefore, this might argue further for delay and for an opportunity to take stock and see whether further density in this part of the City is in the national interest, particularly when there are such marvelous opportunities elsewhere in the City.

I don't think it can be argued that we want to choke off development in the City. We are very excited on this Commission about the Pennsylvania Avenue Development Corporation's success in attracting the private sector into joint enterprises with the public sector in downtown, which had also

developed into a blight visually and which presents a marvelous opportunity for development, and, therefore, I think, a decision taken in the Georgetown area should not give any pause for developers that want to put their investment in that area of the City. There is a lot of building envelope unused under the current zoning, and there is a momentum and excitement there which we applaud and feel that this is very much in the interest not only economically in the District, but in terms of life, activity, safety after dark, and all of the benefits that come from the development of that area.

The authority of the Commission, I think, has been upheld by the Justice Department on several occasions as to render judgment about the construction of a building at all on a site, and if one wanted to take a narrow construction of the Act, which talks about height and appearance, as we have said on previous occasions in this forum, that we can recommend a height of one inch, with an appearance that it should have the texture of grass over the top of it, and one can push that to its logical conclusion.

I would like simply to reiterate for the record the Justice Department's reading on this issue as recently as 1976, because I think it is germane to all of this talk about fairness and about taking. In that letter, which carries on Attorney General Roger's determination of 1960, it talks about the Commission -- ". . . nor can the Commission's duty to report

rightfully be interpreted as being confined to comments on the exterior of buildings, as distinguished from the presence of the building itself in a particular place." It goes on to say, "The Commission may properly comment upon and recommend as to whether construction is appropriate in a given case. . . Nor do we believe that the Commission's recommendation of the District Government advising against construction in a particular site can, as such, amount to an unconstitutional taking. The Commission's recommendation itself has no operative effect. It can neither approve nor deny permission to build in a particular site, for its report is but an expert recommendation to the District of Columbia".

I think this is a key issue in understanding the Commission's actions up to this point. A great deal seems to have been made in certain quarters, in the press, about some mysterious reversal that took place in the Commission's thinking in the last meeting. I think if you will examine the record, it is fair to say, and I think the developer was fair to point out in his presentation that the Commission has over and over again reiterated its position that an all-park solution is its primary objective. The fact that we have given the benefit of our advice about specific designs that have been submitted to us has always been done in that context. Our comments have been used against us to imply some kind of commitment that this is really what we are recommending to be

built, but I think a very important and key distinction has to be made between comments that review design and comments that come to the essential issue of whether we would recommend a permit for construction or not, and that is the essential difference that one cannot over stress.

As the Attorney General points out, the ultimate decision is not ours; it is that of the District of Columbia. They are free to vote either way on this, and they will have to take into consideration many factors that are not properly germane to this Commission's deliberations. Certainly the economic ones are there. On the basis that they may find that they have no other course than to proceed, we have devoted a great deal of our time as a Commission in an effort to try to help minimize the adverse impact of a construction project there, and, as I have said repeatedly in some of the correspondence, the design solution as presented has found great support as an intelligent approach to this problem, if there is to be any construction at all. But this is totally consistent with the position that there should not be any construction at all, or at least any construction of this kind that would not be the kind of development that goes into recreational usage.

Much has been said about the floodplain issue, and let me lay that to rest. We are not experts in the legal application of these executive orders. Our lawyer is the

Department of Justice. We have referred to them for a reading. They have told us that we must take it into consideration. We have taken it into consideration. It was mentioned in our official letter, and it was obviously one of the factors that weighed in our decision of last month, but it was not solely on that basis that we felt the permit recommendation should be denied.

I think one can overstress the aspects of life insurance. It is like saying mother just drowned, but it is okay because she was insured by a high rated insurer. I don't think that is really relevant to our kind of aesthetic determinations here.

What we are interested in is the good of the City, the look of the City, the symbology of its river site, of the setting of the monuments, the opportunity for the City to be a pace setter throughout the United States, in giving an example of quality of life and the aesthetic amenity that a great national capital deserves.

Now, are there other comments?

MR. NETSCH: Mr. Chairman, much has also been said about the newness of these members, including myself, but I want to say that I believe this Commission has thoroughly reviewed this, has accepted its responsibility, has truly been concerned with the urban responsibility, which is the primary

responsibility of this Commission, and in taking its action last month had to recognize that this river, this front door, this bend in the river, plays a key visual part in the urban character of the Washington that is our nation's capital, and I believe that we have, in allowing all of this additional testimony, given the intensity with which all situations are viewed by everyone, and we try to respect that intensity, but I, for one, still believe that it should be Washington's extension of the urban parks.

CHAIRMAN BROWN: Any comments?

MR. CHASE: Frankly, I have reviewed the decision that we made last month, together with the information that has been presented this morning, both pro and con, and although I must admit I have been highly influenced, but not to the extent that it would cause me to change the decision that I have made last month. I still feel that this land should remain available to the people of the District, together with the people of this country, and the only way that I see, again, that this can be done and assured is to look forward toward the park development. It is for that reason, then, that I still feel the same as I did, really, last month.

MR. BURSON: ^{Brown}Mr. Carter, I have a tremendous respect for private property rights, but I think my respect is exceeded only by what I would regard as a greater public interest in the site that just never will be replaceable again

for this purpose, regardless of how long it will take to fulfill whatever the decision is, so I agree with my associates that have spoken so far and I think the action we took the last time is appropriate.

MR. NOVAK: Since I disagreed with the Commission's action last time, I would like to start by defending the Commission's action last time by saying that as I understand the jurisdiction of the Commission and the past history of the decisions of the Commission, it has the authority to make the judgment that it should recommend that nothing be built on this site, and that it has in its past procedures and actions with respect to this matter so indicated, and, therefore, it was not inconsistent for the majority to decide last time against moving forward with construction.

Moreover, the leadership on that point is carried by the Chairman, who is not ^{new} a member of the Commission, so the indication that the Commission reversed itself because of the new members not knowing the facts is not borne out by the action of the Chairman, and Mr. Stone, who was the holdover member of the Commission.

There are many issues that have been argued today and in the past, but, as happens often, when the process begins of winnowing out what is important and unimportant, it becomes apparent that what this has boiled down to is an up or down on the all-park solution.

The floodplain issue I believe is a red herring, and it can be dismissed. The question of permits from the Corps of Engineers or commitments on the part of the authorities to donate land to be worked on by the developer to achieve 82 percent park solution are not relevant, nor are the size or the distances between apartments or the views, if the choice is against any construction at all on this site. Therefore, it is clear that the majority view is we are against the permit because we are against any construction on that site, and it is up to that point I am totally with the Commission in their reasoning and procedures. It is at that point that I run into difficulties.

I applaud the position and the attitude of the Commission members, that they seek here to contribute in a substantial way, because of their mandate and what precedent has imposed on that mandate, through their grand history, some sense of visual judgment, of aesthetic judgment, of concern for design, and concern for history, and it is only appropriate that the Chairman should be a man who, by his background and work, is so eminently associated with matters of art and history in the nation's capital. I have to respect what he says about the way the capital has developed.

Mr. Burson himself, in supporting that view, although a man from the private sector, felt that same concern and Mr. Chase was the one among us who last month stated that we had

to bear in mind that we were thinking not only of the District, but of the nation, so I come to this point sensitive to those concerns and extremely respectful of the concern the citizens have who also hold that view about it.

Simply stated, from my own predilections, I am not sure whether an 82 percent park solution with good design of malls and marinas worse from any point of view than an all-park solution. I happen to like mixed use. I like to be able to take my kids to the park and buy them an ice cream cone, look at the shops, and be safe at night, et cetera, et cetera. So just in terms of my own notions, in protecting the nation's capital, I am not sure that you couldn't have structures on these 18 acres, I am not sure that you couldn't have three acres of structures and 15 acres of park, and have something that is as much of a jewel in our nation's capital, as much of an enhancement of the waterfront as an 18 acre park solution.

People can disagree on that. The disagreement is the more pristine choice of all park solution. My problem, and where we part company after that disagreement, is that there is no all-park solution in the future. I am not prepared to wait 50 years for the Reagan memorial. I believe enough is enough on that terrible landscape which continues every year for the lack of the private sector and the government to get their act together with respect to this particular piece of property.

My disappointment is that through all these years the public authority and a well-intentioned private developer and he must be well-intentioned, at least in the sense of cooperation to have done what he has done -- granted, he was moved by making a profit, and you would expect him to be, but he has worked these years in terms of responsiveness, and it is disappointing to me that it is not possible in terms of the concept of sound economic planning and urban design to achieve a mixed use result about which we could all be proud.

If those buildings are too large, they can be cut back within economic possibility. If there are real concerns about vistas of one sort or another, they can be adjusted, but what we have come up with is apparently there is no mixed use which provides 15 acres of park and three acres of development that still could be considered an appropriate use of a waterfront, and I don't really understand that.

I was, I guess, most moved by Edward Hoffman's remarks. I never met the man or heard him before, but in terms of the detail in which he went through the reasoning why he recommended that we try and achieve a mixed use of the kind we have here, his views say it much better than I can as to why this development should be worked on further, and I certainly incorporate those remarks into my own.

I might point out that I, for one, would not vote to grant the permit today, because the one thing I would in-

sist upon is that we work with the District authorities and with the developer to insure that all of the concerns we have heard addressed that are valid with respect to making sure you really got a park and making sure you really got a marina, and making sure you really did protect the Corps of Engineers' jurisdiction, and so forth, make sure we actually didn't get a pig in a poke, that we got what we ultimately have seen. I believe the apparatus exists, the institutional apparatus exists, and the good will to work toward that solution, but if you don't want any good urban design solution, then, of course, there is no point in working further on it. I am just disappointed that in this case a grand experiment in public-private cooperation failed.

CHAIRMAN BROWN: Thank you very much.

MS. MYERS: Again, I have great respect for the Commission and great admiration for their decisions. I think I would continue to be against denial, not for the project as it is, but against denial at this time. I think, not knowing the alternative to eventual approval of this plan, and I am not certain if it would be better or idea, I think I will stay with being against the granting of a permit.

CHAIRMAN BROWN: To state it another way, would you be for awarding the permit?

MS. MYERS: Well, that would be conditional on many things that we might want to offer up to the developer, but

I guess the question hasn't been put today. We are dealing with the question of the last action, and my position would be the same at this time.

CHAIRMAN BROWN: Mr. Stone.

MR. STONE: I again find myself on the horns of a dilemma. Obviously I think those of us who are on the Commission are really charged with the long range overview of the City, and clearly with the waterfront, in its most ideal circumstance it should be in the public domain.

The developers and their staffs, their professional colleagues, have made a most telling case. We are looking at a waterfront that may remain as is for many, many years to come. As Mr. Novak said, it is an acknowledged failure of the noble effort of the public and private sectors, and I think there is the sanctity of private property, but on the other side of the coin is the risk inherent in undertaking development of a property which is so in the public eye.

In summary, I guess I would have to, with the same disappointment that Mr. Novak expressed, I would have to express my feeling that the greater good of the nation is served by the land remaining in public hands.

MR. NOVAK: It is not in the public hands.

MR. STONE: Well, that we seek ways to obtain it for public use.

MR. NETSCH: Mr. Chairman--

I was asking the Chairman if it is the sense that each of us, by individually expressing our opinions, whether following that there was a requirement that we have another vote.

CHAIRMAN BROWN: We really had a vote.

No, I don't believe so. I don't think further action is required.

MR. NETSCH: All right, then this is accomplished by statements.

CHAIRMAN BROWN: Further comment by any other member of the Commission?

All right, let's move on then. Thank you very much for your time.

The next submission, under the Shipstead-Luce Act, is 81-39, and while they are setting up we might consider Appendix I.

Ladies and gentlemen, the meeting is proceeding.

It was proposed and seconded to grant approval of Appendix I under the Georgetown Act.

Under the Shipstead-Luce Act, we move to SL 81-39.

MR. CARSON: Mr. Chairman, S.L. 81-39 is a resubmission of a proposed retail-office structure located at 409-411 12th Street, Southwest. The site is located just west of L'enfant Plaza and Maryland Avenue and the Virginia line of the Pennsylvania Railroad separates it from the Bureau of

1. The first part of the report deals with the general situation of the country and the progress of the work during the year. It is divided into two main sections: the first section deals with the general situation of the country and the progress of the work during the year, and the second section deals with the specific results of the work.

2. The second part of the report deals with the specific results of the work. It is divided into three main sections: the first section deals with the results of the work in the field of agriculture, the second section deals with the results of the work in the field of industry, and the third section deals with the results of the work in the field of commerce.

3. The third part of the report deals with the financial results of the work. It is divided into two main sections: the first section deals with the income of the work, and the second section deals with the expenditure of the work.

4. The fourth part of the report deals with the general conclusions of the work. It is divided into two main sections: the first section deals with the general conclusions of the work, and the second section deals with the specific conclusions of the work.

5. The fifth part of the report deals with the recommendations of the work. It is divided into two main sections: the first section deals with the general recommendations of the work, and the second section deals with the specific recommendations of the work.



THE DISTRICT OF COLUMBIA

WASHINGTON D.C. 20004

MAYOR
MAYOR

April 3, 1981

The Honorable J. Carter Brown
Chairman
Fine Arts Commission
706 Jackson Place, N.W.
Washington, D.C.

Dear Chairman Brown:

I am writing to you with respect to your March 23, 1981 letter to Mr. Robert L. Moore, Director of the Department of Housing and Community Development.

In that letter, you referred to the proposed transfer of jurisdiction of land on the Georgetown Waterfront from the District of Columbia Government to the National Park Service. Please be assured that the views expressed by Mr. James O. Gibson, Assistant City Administrator, in his letter to you of February 27, 1981, represent the official position of my office. Although the actual transfer of jurisdiction has not yet taken place, the process for such transfer is underway and is continuing at this time. Although this process is a time-consuming one, its completion will result in the effectuation of the transfer.

Sincerely,


M. S. Barry, Jr.
Mayor

Exhibit A-1

APR 3 1981



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 3, 1981

The Honorable J. Carter Brown
Chairman
Commission of Fine Arts
Constitution Avenue and 6th Street, N.W.
Washington, D.C. 20565

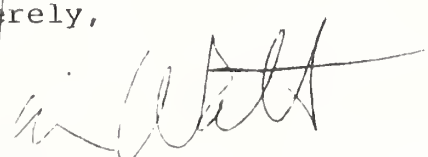
Dear Chairman Brown:

I have followed with interest the recent action of the Commission of Fine Arts with respect to the proposed development on the Georgetown Waterfront. Accounts of the action which I have read appear to suggest that the Commission's recommendation was based upon an assumption that Federal purchase for park purposes of the tract at issue was a viable alternative to the then-pending proposal.

I would like to make clear that the Department of the Interior neither has nor intends to seek acquisition funds to purchase the property for park purposes. This position coincides with the Administration's belief that scarce Federal resources should be focused on revitalizing and upgrading existing park lands.

This Department will, of course, continue to cooperate with local government and private concerns to assure an orderly development and utilization of the Georgetown Waterfront.

Sincerely,


SECRETARY

RECEIVED
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

APR 8 9 57 AM '81

APR 13 1981

RECEIVED

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON

WALTER A. NETSCH

JOHN E. CHASE

ALAN R. NOVAK

BONORA G. MYERS

EDWARD D. STONE, JR.

CHARLES H. ATHERTON, Secretary

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
202-566-1066

April 27, 1981

Dear Mr. Moore:

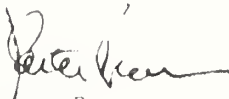
As you know, I wrote you on March 23, 1981 advising that the Commission of Fine Arts, at its meeting on March 10, voted to recommend denial of a building permit for Georgetown Harbour Associates development on the waterfront at 3020 K Street, N.W. (O.G. 81-72).

Because of a zoning review technicality and because the developers wished to present their project in greater detail, the Commission agreed to consider the proposal again at its meeting on April 7, 1981.

Following extensive testimony and argument at that meeting, the members of the Commission found no reason to change their previous vote to recommend denial of a permit, and our report to you dated March 23, 1981 states the Commission's position.

I am enclosing a copy of that letter for the record.

Sincerely yours,



J. Carter Brown
Chairman

Mr. Robert L. Moore
Director
D.C. Department of Housing
and Community Development
1133 North Capitol Street, N.E.
Washington, D.C. 20002

EX-151-A

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON

WALTER A. NETSCH

JOHN E. CHASE

ALAN R. NOVAK

RONDA G. MYERS

EDWARD D. STONE, JR.

CHARLES H. AHERN, Secretary

708 JACOBSON PLACE, N.W.

WASHINGTON, D.C. 20006

202 566-1066

April 23, 1981

Dear Mr. Goldman:

The Commission met with Mr. George Schaffer of your staff to review modified designs for the Willa Cather and Mark Twain Gold Medallion Series medals on April 7, 1981. There was a substantial improvement to both designs, and the Commission was happy to approve them.

Sincerely yours,



J. Carter Brown
Chairman

Mr. Alan Goldman
Deputy Director
Bureau of the Mint
501 13th Street, N.W.
Washington, D.C. 20220

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS MAY 17, 1910

J. CARTER BROWN, Chairman

HAROLD BURSON
JOHN S. CHASE
SONDRA G. MYERS

WALTER A. NETSCH
ALAN R. NOVAK
EDWARD D. STONE, JR.

CHARLES H. ATHERTON, Secretary

708 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20006
202-566-1066

April 23, 1981

Dear Mr. Barnes:

The Commission of Fine Arts met with Carol Johnson, landscape architect, and Ron Eichner, of your staff, on April 7, 1981 to discuss designs for John Marshall Park, proposed for Pennsylvania Avenue and John Marshall Place, N.W. We were all enthusiastic about the approach. In approving the designs, the Commission asked that the working drawings and final plant designations be submitted for review prior to going ahead with actual construction. The success of a park of this type depends a great deal on the quality of details and materials. The Commission looks forward to further submissions.

Sincerely yours,



J. Carter Brown
Director

Mr. W. Anderson Barnes
Executive Director
Pennsylvania Avenue Development
Corporation
425 13th Street, N.W., Suite 1148
Washington, D. C. 20004

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